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ABSTRACT

This guide is to help lawyers and law students work with young students and classroom teachers to integrate lessons on the Bill of Rights into the regular classroom program. Suggestions are given on adapting the lessons for learning disabled, hearing impaired, and gifted students. Lesson plans contain objectives, key concepts and vocabulary, notes for the lawyer or law student, notes for the classroom teacher, and student activities. Information on evaluating the program, additional resources, glossary, and appendices complete the text. The 11 lessons with grade level include: (1) "A Special Birthday Party" (K-1); (2) "Rights in Rogertown" (K-3); (3) "Rights and Responsibilities" (2-3); (4) "The Case of North Harmony Middle School" (4-5); (5) "The Case of New Trend Middle School" (4-5); (6) "The Camp Watchem Cases" (4-5 or 6-8); (7) "The Case of Tech High" (6-8); (8) "The Case of Sports and the Constitution" (6-8); (9) "A New System of Criminal Justice" (6-8); (10) "Right to Die Cases" (6-8); and (11) "Discrimination Cases" (6-8). The volume also contains an assessment of the program, suggested additional resources, a glossary, and two appendices. (EH)

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ED 409 231

Teaching About the Bill of Rights in Elementary and Middle School Classrooms

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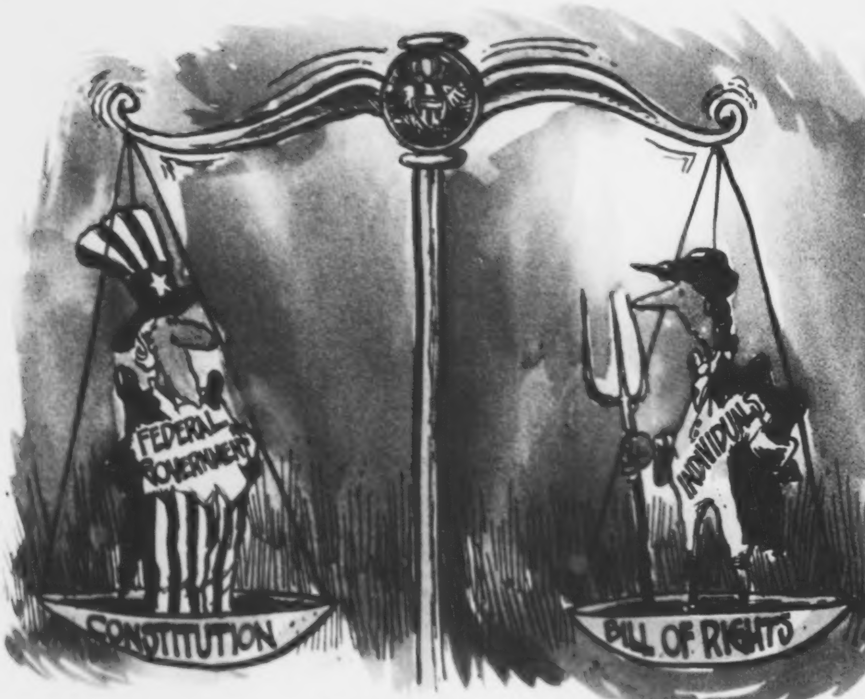

September 25th 1789: Congress passes the Bill of Rights and sends to states for Ratification.

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Teaching About the Bill of Rights in Elementary and Middle School Classrooms

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A RESOURCE GUIDE FOR LAWYERS, LAW STUDENTS, AND CLASSROOM TEACHERS

By

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LINDA RIEKES

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A PUBLICATION OF THE PHI ALPHA DELTA

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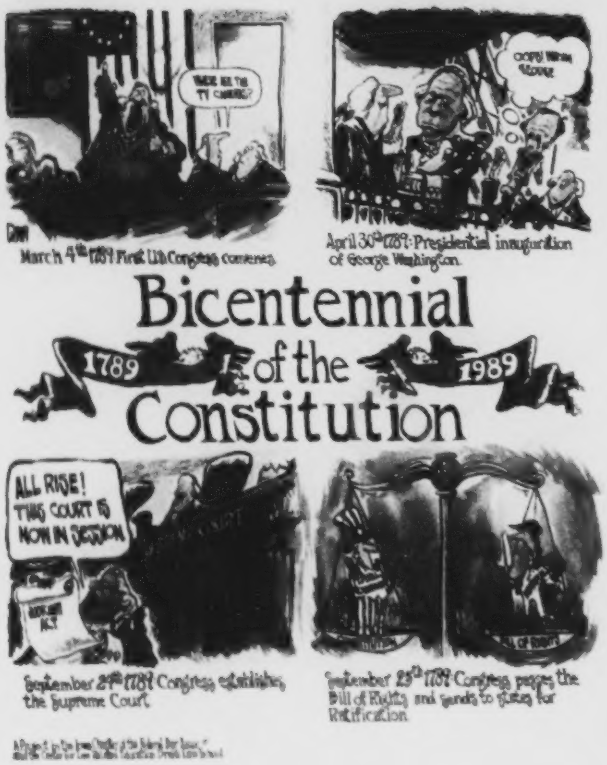
With Support From

THE COMMISSION ON THE BICENTENNIAL OF THE

UNITED STATES CONSTITUTION

Bicentennial Trivia
SUPREME COURT CONVENES IN NEW YORK CITY.
THIS COURT IS NOW IN SESSION... WHAT'S OUR FIRST CASE... WE HAVE NONE?... COURT ADJOURNED!
HOUSE ESTABLISHES THE POSTAL SERVICE
DO YOU THINK 30¢ IS TOO MUCH TO CHARGE FOR A STAMP?
NO!
NEW YORK OFFICIALS ADVERTISE THEIR NEW STATE LOTTERY
...AND REMEMBER, YOU CAN'T WIN IF YOU DON'T PLAY!
LOTT
FIRST U.S. PATENT OFFICE WAS OPENED
...BUT WILL IT WORK?!
RHODE ISLAND RATIFIES THE CONSTITUTION
FINALLY!
SENATORS RECEIVED PAY OF SIX DOLLARS A DAY.
ALL THOSE IN FAVOR OF A PAY RAISE?!
CONGRESS VOTES TO ESTABLISH THE PERMANENT CAPITOL ALONG THE POTOMAC RIVER
COMING SOON TO THIS SITE!
THE UNITED STATES CONDUCTS ITS FIRST CENSUS
HOW MANY OCCUPY THIS RESIDENCE?
INCLUDING LIVESTOCK?
BENJAMIN FRANKLIN DIES IN PHILADELPHIA AT THE AGE OF 84
DUFFY



WHERE ARE THE TV CAMERAS?
DUFFY
March 4th 1789 First U.S. Congress convenes.
April 30th 1789: Presidential inauguration of George Washington.
Bicentennial
1789
of the
1989
Constitution
ALL RISE! THIS COURT IS NOW IN SESSION
JUDICIARY ACT
BILL OF RIGHTS
September 24th 1789 Congress establishes the Supreme Court
September 25th 1789 Congress passes the Bill of Rights and sends to states for Ratification

Cover design and illustrations throughout this book were drawn by artist Brian Duffy, and provided through the courtesy of the Iowa Chapter of the Federal Bar Association and the Iowa Center for Law Related Education.

Copies of these cartoons in multi-color may be obtained in 18" x 24" poster form for schoolroom use. Please write to: Iowa Chapter, Federal Bar Association, Northwestern Building, Suite 200, 321 East Walnut Street, Des Moines, Iowa 50309-2026.

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PREFACE

The last decade of Phi Alpha Delta's history has seen major strides forward in the area of becoming an instrument of service to the people of our nation. We have provided leadership in helping to develop a better informed society about the structure and function of our levels of government and how we as a people are guaranteed important legal rights with correlative responsibilities. We are truly democracy at work.

One of the Fraternity public service projects began in June 1981 when the Executive Board adopted a resolution to become an active participant in the upcoming bicentennial celebration of the 200th anniversary of the U.S. Constitution. While there is a proud history of PAD events and activities during succeeding years, this publication reflects our most recent commitment in the Bicentennial area, funded by the Commission on the Bicentennial of the U. S. Constitution in Washington. It involves a unique teaching function for our lawyer and law student members as they help elementary and middle school classroom students understand the Bill of Rights.

Evidence that our young people are growing up without a working knowledge of their historical and civic heritage is well-documented. Special surveys have confirmed that nearly one-third of the high school juniors in the U. S. cannot identify the purpose of the Declaration of Independence or say in which 50-year period it was signed. As long as 10 years ago, only three percent of 9-year-old students named social studies as their favorite subject, compared to 48 percent selecting mathematics and 24 percent choosing language arts.

We have also come to realize that teachers at the elementary and middle school levels don't receive the specialized training they need to teach about the U.S. Constitution and Bill of Rights. As a result, they lack the historical and legal knowledge to transmit this information to their students in legally and historically accurate ways.

This need was recognized last May by the Bicentennial Commission because Phi Alpha Delta had proposed a plan to help satisfy this need. The Public Service Center asserted that, with special training, lawyers and law students can help elementary and middle grade students (and teachers) to gain a better understanding of their rich civic heritage, and the effect that history has had on their present, their future, and the future of our democratic society. The Bicentennial Commission unanimously approved the PAD proposal.

The project is called "Lawyers and Law Students: The Bill of Rights in Elementary and Middle School Classrooms." The 12-month grant award has enabled selected lawyers and law students to visit the classrooms of America to help young learners to understand the importance of the Bill of Rights throughout history and in their own lives today. This approach will enrich and extend exciting instructional programs, provide classroom teachers with the assistance they need to transmit legally and historical accurate information about the Bill of Rights to their students; promote the use of law students; and, most importantly, give young students a greater understanding and appreciation of the history, fundamental principles and present-day applications of the Bill of Rights.

This new resource guide has been written by Roger Goldman, constitutional scholar and law school professor at St. Louis University of Law, that will become the vital working tool of the project. It contains instructions for lawyers and law students on how to work with young students, how to work with classroom teachers, how to integrate lessons into the regular classroom program, and specific lesson plans for kindergarten through eighth grade classrooms. This guide will also help the lawyers and law students adapt its lessons for educable mentally handicapped, hearing impaired, and gifted students.

Once again, Phi Alpha Delta has produced another "first" in developing beneficial relationships between the legal community and the public and nonpublic schools of our nation.

The contents of this guide have been copyrighted. However, we are glad to authorize the reproduction of any part of the publication without our written permission, provided credit is given to the Service Center for its availability. We welcome comments, criticism, and suggestions for improvement.

Robert E. Redding

Robert E. Redding
Executive Vice President
Phi Alpha Delta Public Service Center

ACKNOWLEDGEMENTS

The design and development of Teaching About the Bill of Rights in Elementary and Middle School Classrooms was a team effort. Several hundred lawyers, law students, educators, and classroom students were involved in designing, pilot testing, and reviewing portions of the guide. The Phi Alpha Delta Public Service Center wishes to express its debt and appreciation to these individuals and groups.

A special thanks goes to the Commission on the Bicentennial of the United States Constitution for its support of many of the development and distribution costs.

Our grateful appreciation goes to the key persons--authors and major contributors--for the rich collection of lesson materials offered in the guide. These materials will greatly enrich the field of law-related education. Such persons include the following:

Roger Goldman served as the project's constitutional legal scholar. He is currently a professor of Constitutional Law at St. Louis University School of Law. His areas of specialization include constitutional law, criminal and civil procedure, and federal jurisdiction. He is very active in the field of law-related education and devotes much of his time to working with classroom teachers and legal professionals to strengthen law-related education programs. He was the principal author of the guide and conducted the training sessions at the law school chapters of Phi Alpha Delta.

Linda Riekes is Director of the Law and Citizenship Education Unit of the St. Louis Public Schools. She has been an active member of the law-related education community at local, state, and federal levels for many years, and has authored and co-authored numerous textbooks and curriculum materials in this field. She served as one of the two law-related education specialists for the project. For many years, she has performed valuable services for the Phi Alpha Delta Public Service Center as Community Resource Consultant.

Armentha Russell is coordinator of the Middle and High School Drug-Free Schools and Communities Program administered through the Law and Citizenship Education Unit of the St. Louis Public Schools. She served as the other law-related education specialist for the project. She has also rendered valuable services to the Service Center as Drug Education Consultant.

David Thomas Konig served as the project's constitutional historian. He is currently Chairman of the History Department at Washington University in St. Louis.

Sharon Slane served as Editor for the project, responsible for reviewing and editing the resource guide and for development of the evaluation instruments. She is an educational psychologist in St. Louis and has co-authored, and edited a wide variety of law-related education textbooks, articles, and curriculum materials.

Susan B. LaGrone is coordinator of the Magnet Law/Consumer Education Program for the Law and Citizenship Education Unit of the St. Louis Public Schools.

Dolores B. Malcolm is coordinator of the Chapter II Middle Schools Program for the Law and Citizenship Education Unit of the St. Louis Public Schools.

Our gratitude is also extended to several participating Phi Alpha Delta law school chapters which participated in the pilot testing of lesson materials. These chapters included:

Wilmington, Delaware	Read Law School Chapter Widener University School of Law
Washington, D.C.	Langston Law School Chapter Howard University School of Law
St. Paul, Minnesota	Monroe Law School Chapter Hamline University School of Law
St. Louis, Missouri	Champ Clark Law School Chapter Washington University School of Law John L. Sullivan Law School Chapter St. Louis University School of Law
Salt Lake City, Utah	Sutherland Law School Chapter University of Utah Law School
Columbia, Missouri	Lawson Law School Chapter University of Missouri Law School

In addition, many Fraternity alumni members participated in this project to whom we extend our thanks. They include: Curtis Anderson, Beverly Bunn, Virginia Curtis-Lee, Joseph Daly, Kenneth Sprang, Annette Wencl, Alan Zelcowitz (Justice, St. Louis Alumni Chapter), and Nathan Landman, alumnus and member, Bill of Rights Committee, St. Louis Metropolitan Bar Association.

Many other persons contributed their time and expertise to this project. For example, Mr. Jack Hoar, Social Studies Supervisor, Long Beach Unified School District, provided many useful suggestions for improving the instructional materials.

Special thanks also go to the many elementary and middle school teachers and students in Delaware, the District of Columbia, Minnesota, Missouri, and Utah who participated in the pilot testing of project lessons.

INTRODUCTION

Law-related education is an idea whose time has come. It has become a national program designed to help the youth of America to become more informed, active, and productive citizens. Law-related education:

- provides students with the skills they will need to participate fully and actively in our democratic society;
- teaches basic democratic values such as respect, responsibility, equity, and truth;
- explores the relationship between rights and responsibilities in a democratic society;
- promotes positive character development and positive attitudes toward the law and our legal system; and
- helps students to make crucial connections between their civic heritage and their civic responsibilities today.

Law-related education relies heavily on the involvement of members of the legal community. Lawyers, law students, judges, police officers, and others can play an important role in helping young people to understand and appreciate our legal system.

Teaching About the Bill of Rights in Elementary and Middle School Classrooms is based on the following basic premises:

- Law-related education should be integrated into the regular school curriculum.
- A resource person from the legal community should be an integral part of any law-related education program.
- Volunteers from the legal community can make many positive contributions to law-related education programs including being a role model for the students, reinforcing information, correcting mistaken beliefs, presenting new information, and being physically present in the classroom to humanize the law.
- A careful study of the U.S. Constitution, with a particular emphasis on its first ten amendments, is an ideal way to address important law-related concepts.

While this guide was designed primarily for legal resource persons, the lessons can also be presented by classroom teachers. It is hoped that the materials can help to foster law-related education and develop new and beneficial relationships between the legal community and the public and nonpublic schools of our nation.

OVERVIEW OF THE RESOURCE GUIDE

Teaching About the Bill of Rights in Elementary and Middle School Classrooms offers a variety of strategies, activities, and resources for teaching about the Bill of Rights.

BENEFITS TO LAWYERS AND LAW STUDENTS--discusses some of the many benefits to members of the legal community of becoming actively involved in law-related education at the elementary and middle school levels.

WORKING WITH THE CLASSROOM TEACHER--provides a variety of helpful hints for maximizing the cooperative relationship between the lawyer or law student and the classroom teacher.

WORKING WITH K-8 STUDENTS--provides helpful hints for working with elementary and middle school students, including suggestions for making a successful classroom presentation.

WORKING WITH SPECIAL STUDENTS--offers suggestions for adapting lessons to meet the needs of special students including the educable mentally handicapped, orthopedically handicapped, hearing impaired, and gifted.

BACKGROUND AND HISTORY OF THE BILL OF RIGHTS--contains a brief description of the Bill of Rights, its sources in history, its purposes, its provisions, and its application to contemporary issues.

LESSONS PLANS--each contain the following features:

1. Statement of Purpose and Objectives
2. Key Concepts and Vocabulary Words
3. Notes for the Lawyer or Law Student including:
    - Getting Ready for the Lesson
    - Teaching the Lesson
4. Notes for the Classroom Teacher including:
    - Preparing Students for the Lawyer's or Law Student's Visit
    - Follow-up Activities
5. Student Activities

EVALUATING THE PROGRAM--includes information and tools for assessing the effectiveness of the resource guide and individual classroom presentations.

ADDITIONAL RESOURCES--contains sources and contact persons in the field of law-related education, with particular emphasis on teaching about the Bill of Rights.

GLOSSARY--includes brief definitions of the vocabulary words listed in each lesson.

APPENDICES--include a complete text of the Bill of Rights, Section 1. of the Fourteenth Amendment, and excerpts from an article by Professor Roger Goldman on using the Socratic method to teach Bill of Rights-related issues.

BENEFITS TO LAWYERS AND LAW STUDENTS

Listed below are just some of the benefits to legal resource persons of participating in law-related education programs. This list was compiled by Professor Joseph L. Daly of Hamline University School of Law, St. Paul, Minnesota and was published by the Phi Alpha Delta Public Service Center in a monograph entitled, "For Value Received: Community Law Program Benefits to Law Students."

Benefits

1. Improving knowledge of the law.
2. Synthesizing legal knowledge.
3. Understanding the public's perception of lawyers.
4. Developing oral skills--speaking before large groups.
5. Developing expertise in handling questions.
6. Developing lawyer/client relationship skills--learning how to explain law to lay persons.
7. Developing a sense of professionalism.
8. Developing a working relationship with another professional as an equal.
9. Developing legal training skills.
10. Offering an opportunity to fulfill the professional duty from the *Code of Professional Responsibility* to educate the public.
11. Deriving satisfaction from using one's skills and legal knowledge in a positive, beneficial way.

In addition to all of the benefits listed by Professor Daly, *personal satisfaction* is perhaps one of the greatest benefits of all--the satisfaction that comes from a deed well done in the service of one's community. For all these reasons, we hope you will get involved in helping young students understand the meaning and implications of the Bill of Rights. The benefits far outweigh the costs to you of contributing your time and effort.

WORKING WITH THE CLASSROOM TEACHER[1]

Elementary and middle school teachers are usually very eager to have lawyers and law students in the classroom. Teachers often comment that an effective resource person is vital to their law-related program. The following suggestions will help you plan your visit to maximize your contribution.

1. Work with your local bar association or law-related education project director to identify teachers that may be interested in having a legal resource person visit their classrooms. Very often, bar associations and law-related education directors already have a list of interested teachers and can make the initial contacts for you.

   Before contacting teachers directly, be sure to keep in mind that many schools have special clearance requirements for contacting teachers or visiting classrooms. Find out what these requirements are before contacting teachers directly or visiting a school. A call to the school principal will give you an opportunity to identify appropriate guidelines and procedures and to explain your needs and purposes.

2. Once you have identified a teacher to work with, you may want to share a copy of the resource guide with him or her. This will give the teacher a better understanding of what you will be doing in the classroom and will provide the teacher with background for helping you to tailor your presentation to the needs of the particular group of students.

3. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share specific information about the lesson you will be presenting. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or excercises you wish students to read and complete before your visit. (For many lessons, students are asked to read a case description and to identify all facts in the case before the visit.)

4. In order to ensure that your visit and presentation are an integral part of the ongoing instructional program in each classroom, ask the teacher to suggest ways of relating your lesson to other current classroom activities.

5. Ask the teacher to have students wear name tags, with their first names printed in large letters. Call on students by name. It will help to individualize your classroom visit and to show the students you are interested in them.

6. Ask the teacher to be in the classroom during your visit. This may even be the law in your state. If there is a discipline problem, the teacher should be the one to handle it.

7. Generally speaking, it is better not to visit a school before the sixth week of the school year and *never* the day before or after a school holiday.

---

[1] Adapted from *A Resource Guide to Assist Lawyers and Law Students For Participation in Kindergarten through Eighth Grade Law-Related Classrooms*. Washington, D.C.: Phi Alpha Delta Law Fraternity, International, October 1987, p. 8.

8. The suggested grade levels for lessons are flexible. Because of growth-rate variances and differences in sophistication, most lesson ideas could be used with little adaptation at the next higher or lower grade levels. Obviously, this is arbitrary. The teacher will help you determine the best lesson for his or her class.

9. You probably shouldn't let your visit exceed approximately 20-25 minutes for kindergarten through third grade classrooms, 25-35 minutes for fourth through sixth grade classrooms, or 45-50 minutes for sixth through eighth grade classrooms. However, each classroom teacher can provide more specific guidance with respect to the time limitations of presentations to his or her class.

10. Send a "thank you" letter to the teacher and students after your visit. It will demonstrate that you care and that you enjoyed the experience. If possible, a copy of the letter might be sent to the principal and superintendent establishing your opinion about the importance of law-related education. A letter from a prominent attorney can reinforce the teacher's commitment to law-related education and help promote its expansion to other classrooms.

WORKING WITH K-8 STUDENTS[2]

Chances are, you'll never have a more enthusiastic and accepting audience than with the elementary and middle school students you work with as part of this program. For the most part, students will be eager to hear what you have to say and to contribute to the discussion. The following suggestions will help you to have a successful classroom visit.

1. Try to be yourself. Don't spend time trying to impress the students.
2. If you are nervous about presenting the lesson, try not to worry about it. You might even want to share your feeling with the students. They will understand and will accept you anyway.
3. Know your subject. You are the expert. Prepare a detailed step-by-step outline of your presentation. You may have to make some last minute adjustments, but if you know your materials that shouldn't be a problem.
4. Know your audience. The classroom teacher can help you with this.
5. Use participatory activities to get students involved. Don't lecture. You'll lose the students if you do.
6. Don't try to "cover" everything. Instead, help the students to "discover" and "uncover."
7. It is more important to introduce one or two main concepts and explain them fully rather than to introduce a large number of concepts without making all of them understandable.
8. Speak clearly and slowly, using simple language that the students can understand. If you plan to use a difficult word or concept, stop and ask students if they understand. If not, define the word or concept for them and give a straightforward example.
9. Call students by their first names and try to involve as many students as possible.
10. Be sure all students can see and hear you; move around the room.
11. Use concrete examples--the more concrete, the better.
12. Encourage questions as you go along.
13. When in doubt, ask the teacher for assistance. He or she may have an especially helpful activity or idea but may not volunteer it unless asked.
14. Be flexible. You may have prepared your lesson very carefully. However, when you get to the classroom, you may have to make impromptu adjustments to ensure a quality experience for the students.
15. Remember, you are a role model. The students will pay attention to you because of who you are and they will also remember your attitude toward them and the subject matter.

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[2] Adapted from *A Resource Guide to Assist Lawyers and Law Students For Participation in Kindergarten through Eighth Grade Law-Related Classrooms.* Washington, D.C.: Phi Alpha Delta Law Fraternity, International, October 1987, p. 9.

WORKING WITH SPECIAL STUDENTS[3]

Federal legislation has mandated the mainstreaming of many students who are identified as "exceptional" or "special." This includes the following categories: educable mentally handicapped; learning disabled; behaviorally disordered; orthopedic, language, visual, and hearing impaired; and gifted. While many such children are educated in the regular classroom, there are many others whose needs are best served by attending class with other students in their exceptional category.

Resource persons such as yourself can serve an important function for the young adolescent who has been educated apart from the regular classroom. At this age, exceptional students are beginning to plan for their future roles as independent, productive adults. Their contact with the adult world often has been limited. Exceptional learners generally are very interested in information provided by lawyers and law students and are quite appreciative of their visits.

Working with classes of exceptional students provides the resource person with an exciting opportunity to bring valuable information to students and, at the same time, to expand students' knowledge of, and contact with, the world they are preparing to enter.

It is particularly important to plan your lesson with guidance and assistance form the classroom teacher when you are planning to work with special students. The teacher can determine the appropriateness of the materials and can offer useful suggestions on how to adapt a lesson to meet the special needs of the students.

HINTS FOR WORKING WITH EDUCABLE MENTALLY HANDICAPPED STUDENTS

1. The sophistication of educable mentally handicapped students is often higher than one would imagine, particularly with adolescents. The amount of television viewed and their "street sense" adds to this sophistication.
2. It is vital not to "talk down" to the students because their academic skills are low.
3. It is important to focus on students' everyday problems and how to assist them in solving those problems.
4. Vocabulary should be very simple. It helps also to speak slowly and clearly.
5. Concrete examples are best. Abstractions that require extensive explanation tend to lose the student. If students can touch or see a concrete example, they are more likely to retain the concept.
6. Call upon students by name and try to involve as many students as possible. Each student should wear a name tag.

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[3] Adapted from *A Resource Guide to Assist Lawyers and Law Students For Participation in Kindergarten through Eighth Grade Law-Related Classrooms*. Washington, D.C.: Phi Alpha Delta Law Fraternity, International, October 1987, pp. 58-72.

7. Establish the length of the presentation with the teacher in advance. The educable mentally handicapped child generally has a shorter attention span than other students.

8. It is more effective to introduce one or two main concepts and explain them, rather than to introduce a number of side issues that can be confusing to the students.

9. Classrooms of educable mentally handicapped students are unique in that they may contain more than one academic level. Thus, it is imperative that the resource person attempt to present concepts in very simple terms.

HELPFUL HINTS FOR WORKING WITH ORTHOPEDICALLY HANDICAPPED STUDENTS

1. Students often feel that the law doesn't have anything to do with them. They feel like outsiders. By visiting their classroom, the lawyer or law student can help change this attitude.

2. It is very important to talk with teachers to find out what kind of handicaps students have and the implications this has for your presentation.

3. The excitement of a lawyer or law student caring enough to come into the classroom can be used to great advantage. It is very helpful to spend time at the beginning to establish who you are, what you do, where you live, a little about your family, and why you are glad to be at the school. Your attitude of genuine concern will generate a great deal of interest in your lesson.

4. If you can, refer to a role model. If you know of an orthopedically handicapped person in the legal profession, you can provide a sensitive, inspirational example to students.

HELPFUL HINTS FOR WORKING WITH HEARING-IMPAIRED STUDENTS

1. There are various approaches to teaching the hearing-impaired student. In some schools, these students are taught to "sign." In others, the emphasis is on speaking. In some schools, the two methods are taught in combination. It is very important for the resource person to understand which approach is being used in the classroom he or she will visit, and to make advance plans with the teacher about the presentation. Visiting lawyers may make arrangements with classroom teachers to have a person stand to their side and sign what they are saying to the class.

2. If someone is signing you, it is important for you to give the interpreter the time to interpret. Therefore, it is important to speak slowly and distinctively. The same is true for lip reading. When students are reading your lips, you must be certain always to face them when you speak.

3. In advance of your visit, work with the teacher to set up a plan for helping you respond to students whom you may not be able to understand.

4. The excitement of a lawyer or law student caring enough to come into the classroom can be used to great advantage. It is very helpful to spend time at the beginning to establish who you are, what you do, where you live, a little about your family, and why you are glad to be at the school. Your attitude of genuine concern will generate a great deal of interest in your lesson.

5. If you can, refer to a role model. If you know of an orthopedically handicapped person in the legal profession, you can provide a sensitive, inspirational example to students.

HELPFUL HINTS FOR WORKING WITH GIFTED STUDENTS

1. It is important to discuss with the teacher of gifted students both the subject area and the make up of the class.

2. In working with gifted students, keep these points in mind:

   - gifted students may have a tendency to monopolize or dominate the conversation;

   - they can be bored with a routine presentation;

   - they often disagree more vocally than other students;

   - they may be very impatient with themselves and very critical of themselves and others;

   - they can be extremely interested in vocabulary and participatory learning.

3. Law-related education is an excellent learning tool to stimulate the gifted student. With the gifted, it is very important for students to be able to analyze a concept from different perspectives. The case study method can help students to learn that there can be more than one right answer and that there may be several points of view.

4. Planning and organization are particularly crucial to an effective lesson with gifted students.

BACKGROUND AND HISTORY OF THE BILL OF RIGHTS[4]

The first ten amendments to the United States Constitution are known as the Bill of Rights. The purpose of these amendments is to set forth limits on what the United States government can do to individuals. For example, they prohibit the federal government from infringing on the right of the individual to speak freely and from denying the individual the right to a speedy trial in a criminal case. Many rights we take for granted are not mentioned in the Bill of Rights, for example, the right to marry and raise a family, the right to vote, and the right to travel, but these rights have nonetheless been given constitutional protection by the Supreme Court in cases before it.

Two important points about the Bill of Rights are:

(1) Until 1868 and the passage of the Fourteenth Amendment, the Bill of Rights only limited the United States, not the states; and

(2) the Bill of Rights only concerns itself with what government can do to the individual, not what a private person can do to an individual.

Unlike U.S. laws which can be enacted by a majority vote of the House and Senate and signature of the President, amendments are much more difficult to pass, requiring a two-thirds approval of the House and Senate, and a three-fourths approval of the states.

Most scholars believe that without the assurance that a Bill of Rights would be added, the Constitution would not have been ratified by the states in 1787 and 1788. Those who favored including a bill of rights in the Constitution were known as the Anti-Federalists. They were concerned that the powers granted the United States might lead to oppression of individuals by the federal government and its new powers. Many of those favoring the Constitution *without* a bill of rights, such as Alexander Hamilton, were known as Federalists. Alexander Hamilton believed that the Constitution itself was a bill of rights. He did not believe the federal government had the power to violate individual rights, and he feared that the listing of some rights might indicate no other rights existed. James Madison, the father of the Constitution, also initially opposed a national bill of rights. He believed that a Bill of Rights--a mere "parchment barrier"--would not protect individuals if the government wanted to infringe on those rights (Kammen, Michael (Editor). *The Origins of the American Constitution*. New York, NY: Penguin Books, 1986, p. 369). However, it was Madison himself who introduced a draft of the Bill of Rights in the first session of Congress in 1789. The Bill of Rights was passed by Congress in that year and ratified by the states in December of 1791.

The original Constitution, written in 1787, does in fact have protections for individual rights, although that document is mainly concerned with structural questions involving allocation of power within the federal government, and the federal government's relationship to the states. Among the examples of protections for individuals in the

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[4] Reprinted with minor adaptations from Goldman, Roger; Jenkins, Steve; Riekes, Linda; and Slane, Sharon. *Teacher's Resource Manual: The Bill of Rights and YOU.* St. Paul, MN: West Publishing Company, 1990, pp. 3-7 This teacher's resource guide accompanies the student book, *The Bill of Rights and YOU*, written by Steve Jenkins, Linda Riekes, Roger Goldman, and Patricia McKissack, also published by West Publishing Company, 1990.

Constitution are the Contracts Clause (prohibiting the states from impairing the obligation of contracts), as well as prohibition of ex post facto laws (laws that provided a penalty for a crime when none existed at the time the crime was committed) and bills of attainder (legislative acts which allowed a person to be charged and convicted without a trial) (Lieberman, Jethro K. *The Enduring Constitution: A Bicentennial Perspective*. St. Paul, MN: West Publishing company, 1987, p. 281.). Another example is the limitation on Congress's ability to put restraints on the writ of habeas corpus (a proceeding to challenge the legality of a person's detention). Various provisions of the Constitution limited the states, others limited the federal government, and still others limited both the states and the federal government.

The sources of the Bill of Rights are the Magna Carta written in 1215, and other English laws which first used the phrase "due process." These English sources required the king and government officials to operate under rules of law in their dealings with individuals. Many English philosophers of the 17th and 18th centuries believed that the purpose of government was to protect the exercise of certain natural rights including life, liberty, and property. These philosophers influenced Thomas Jefferson, who wrote in the Declaration of Independence that certain rights were self-evident, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness," (The Declaration of Independence 1776). Finally, the state constitutions in existence at the time the Bill of Rights was being written set forth many rights which were included in the Bill of Rights.

GENERAL PROVISIONS OF THE BILL OF RIGHTS

Unlike the constitutions of many countries, our Constitution and Bill of Rights do not require the government to provide us with material goods like housing, food, or health care. The Bill of Rights, for the most part, restricts government power rather than requiring the government to do something. One exception, however, is that the Sixth Amendment has been interpreted to require the government to pay for the legal representation of an indigent person accused of crime.

The Bill of Rights, along with the rest of the Constitution, is the supreme law of the land. Under the Supremacy Clause of the Constitution (Article VI, paragraph 2), the Constitution, the Bill of Rights and the rest of the amendments, as well as all federal laws and treaties consistent with the Constitution, override all inconsistent sources of law, including the constitutions and laws of the states. Many of the provisions of the Bill of Rights apply to the states through the Due Process Clause of the Fourteenth Amendment.

All government officials, both state and federal, take an oath to obey the Constitution. When there is a question in court as to whether a law violates the Bill of Rights, it will usually be up to the court to determine the meaning of the Bill of Rights. The power of the federal courts to review decisions of the other branches of government is known as "judicial review." Although the constitutions of most other countries have many more rights than those listed in our Bill of Rights, in many of those countries, the rights are not enforced in the courts. This is because the courts are not independent of the other branches of government, or because the courts' decisions would not be obeyed by the other branches.

A Bill of Rights is needed in a free society in order to protect the rights of individuals from abuses by government. Since government rarely acts against the interests of the majority--after all, in a democracy, the majority rules--the beneficiaries of specific decisions are usually minorities, and often unpopular minorities at that. Yet, the entire society benefits from the protection of minority rights. For example, compare the protections given to persons accused of crime under our Bill of Rights with the treatment of such persons in countries under military dictatorships, where such rights aren't granted. Furthermore, an unpopular opinion may, in time, become the opinion of the majority.

INTERPRETING THE BILL OF RIGHTS

The reason that cases interpreting the Bill of Rights are so controversial is that the Bill of Rights protects the minority against the majority. That is, even though in a democracy the majority generally rules, a very important principle to which we all subscribe is that even if 99 percent of the people want to violate the constitutional rights of the minority, the Bill of Rights legally prevents them from doing so. When lifetime federal judges overrule the majority view as expressed in legislation, it is bound to make the majority angry.

Because the framers of the Constitution realized the hostility that court decisions would bring about, the Supreme Court justices and lower federal court judges were guaranteed their independence by being appointed for life "during good Behavior," with removal only by the cumbersome process of impeachment. The Constitution also provides that salaries of judges during their terms of office can't be reduced by Congress (because Congress might do so vindictively in opposition to an unpopular decision). (U.S. Constitution, Article III, Section 1.)

However, it is not just judges who are to interpret the Constitution. All officials take an oath to uphold it, and if the Bill of Rights is left just up to judges to enforce, it won't be in the hearts and minds of the citizens (and if the executive and legislature don't support the decision of the courts, it will not be enforced).

It is unusual for courts to declare laws unconstitutional, so that whether or not a law should be passed is usually the crucial question, not whether a law which is passed is constitutional. In studying the Bill of Rights, students often think that every law raises a constitutional question. In fact, there is tremendous leeway in the political arena for passing laws or not, rather than looking to the courts to invalidate laws. The Bill of Rights is a floor below which other laws cannot go. What is not in the Bill of Rights is just as important as what is in it.

The majority of cases discussed in this guide involve the application of the Bill of Rights to the states rather than to the federal government. This is because most Bill of Rights cases reaching the Supreme Court involve action taken by the states. In general, provisions of the Bill of Rights restrict the states to the same extent they restrict the federal government.

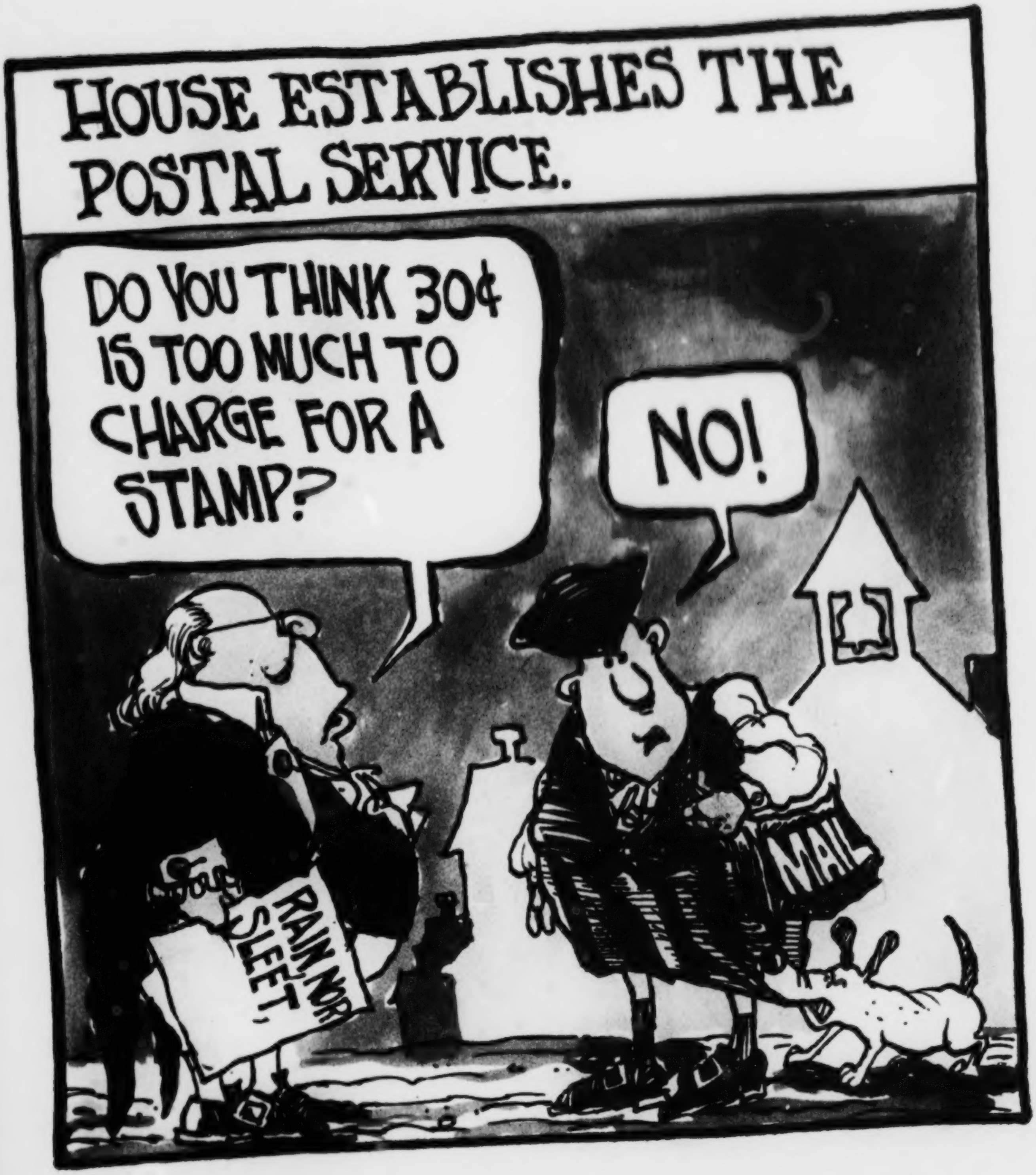
It is rare for there to be a single opinion of the Supreme Court in cases involving the Bill of Rights. Most of the time, there is at least one dissenting opinion. It is not uncommon for there to be a 5-4 vote. If just one justice changes his or her vote, or if a new justice replaces a justice in the majority, the next time a similar case comes to the Court, the result could come out differently. However, the doctrine of *stare decisis*--respect for previous decisions--might dissuade the Court from reversing itself. There are a number of cases in which there is no agreement by five justices to form a majority of the nine justices. In such cases, the first opinion is called the "plurality opinion." Concurring opinions agree with the result, but not the reasoning, of the majority as in the abortion case, *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

CONTEMPORARY ISSUES AND THE BILL OF RIGHTS

Since the Bill of Rights was written long ago, how can it apply to today's problems? Should the Bill of Rights adapt to changing times, as some judges believe, or be interpreted according to the intent of those who wrote the amendments, as others believe? Is the only relevant question in deciding a case, "What would the framers of the Bill of Rights say if they were deciding the case from their vantage point in 1791?" Or, is the role of a judge to keep the Constitution current with the times? For example, there were no telephones in 1791, so is it therefore constitutional to put a wiretap on a phone, or is that a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures? Courts have been willing to apply general principles to new technology and prohibit the police from wiretapping telephones without a warrant as a violation of the Fourth Amendment. The framers were concerned about government intrusion into the privacy of the home, and wiretapping is just an illustration of the larger problem. More controversial are government actions not considered by those who wrote the Bill of Rights, for example, laws declaring it unlawful to teach certain foreign languages, or prohibiting private schools, or limiting which relatives can live together in a home. In each of these cases, the Supreme Court held that the law was unconstitutional, even though no specific provision of the Bill of Rights or the Constitution addressed the issues. These cases illustrate that if the government passes laws which are radically inconsistent with our traditions and history, a court will generally hold them unconstitutional. These decisions suggest that some rights are fundamental to all free citizens, existing outside the Constitution, or "natural rights" in the language of 18th century English philosophers. Since legislatures don't often pass such laws, these decisions--based on the doctrine of "substantive due process"--are rare.

Since a Bill of Rights case typically pits the individual against the state, courts have to decide whether the government's reason for limiting an individual's right is justifiable. Rarely is the right an absolute one. More often, courts balance the government's need to regulate conduct with the individual's claim of constitutional protection. Usually, if the right is clearly protected by the Constitution, the government needs a very strong justification to deny that right. For example, the First Amendment's protection of free speech and press would prevent the government from stopping the publication of an article unless grave harm would result from allowing the publication, such as disclosing when U.S. troops were going to attack an enemy during a war.

It is important for students as well as all citizens to be familiar with the Bill of Rights. Vigorous exercise by all citizens of the liberties protected by the Bill of Rights is important in order to keep our country free. Try to imagine what life would be like if we did not exercise our right to speak and worship freely, if we could not get fair trials in our courts, if we could not vote, or if our rights were dependent on our race, religion, or sex. These rights were often established in court cases brought by persons who were unpopular in their communities, but their actions established freedoms which all persons can now enjoy. Unless we are familiar with our rights and exercise them, Madison's fear that the Bill of Rights was merely a "parchment barrier"--a useless piece of paper--will come true.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LESSON PLANS

Lesson 1: A Special Birthday Party (K-1)

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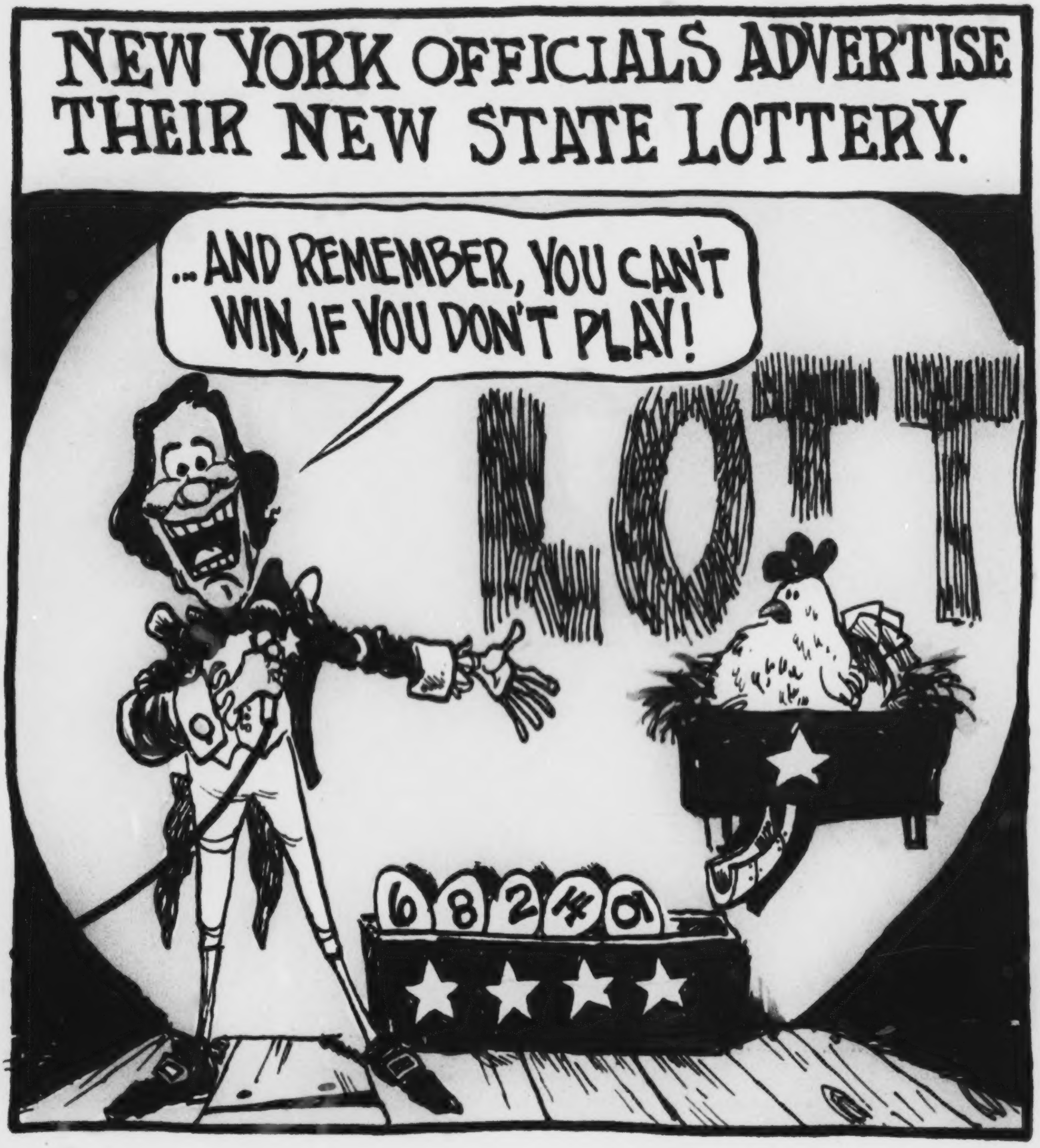

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Lesson 1: A Special Birthday Party
(K-1)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce students to the concept of rights and to the Bill of Rights. Specific objectives are to:

1. Develop students' understanding of the concept of rights;
2. Introduce students to the Bill of Rights;
3. Develop students' awareness and understanding of the concepts of freedom of speech and freedom of religion as examples of rights protected by the Bill of Rights; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

Bill of Rights
freedom
freedom of religion
freedom of speech
rights
rule
200th birthday of the Bill of Rights

Getting Ready for the Lesson

1. The lesson itself can be presented in approximately 10-15 minutes. A follow-up birthday party with refreshments or an additional art activity will take another 15-25 minutes.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you will be sharing with students during your visit. This lesson is greatly enhanced by providing cookies or cupcakes for the students as part of a real birthday party for the Bill of Rights. Be sure that you and the teacher are in agreement as to whether or not this should occur and who is responsible for providing refreshments.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson, and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that five and six year olds can understand. (See Glossary)

6. Review the lesson materials.

7. Make sure you have a sufficient number of copies of any additional handouts and an evaluation form for the teacher.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Tell them who you are and what it means to be a lawyer or law student. Give them a simple example such as "helping people prove they are not guilty when they have been accused of committing a crime," or "helping people prove that they have been treated unfairly," or "helping to prove someone is guilty of committing a crime."

2. Write your birth date on the board. Ask students how many of them know when their birthday is and how old they will be on their next birthday. Select two or three children to tell you their birthdates and ages, and write them on the board next to each child's name.

3. Now ask students how many of them have ever been to a birthday party. Most children will raise their hands. Ask for a show of hands of children who have had parties on their birthdays. Ask two or three volunteers to tell you what they like about birthday parties and what makes them special.

4. Tell students that in 1991 we celebrate a special birthday in our country. Write the date December 1791 on the board. Tell students that this is the birthdate of the Bill of Rights, written a long, long time age, 200 years ago. Ask students if any of them has ever heard of the Bill of Rights. Accept answers from all volunteers and then explain that the Bill of Rights is a special set of rules that gives us important rights.

5. Ask students if they know what a "right" is. Accept answers from all volunteers and then explain that a right is something that we can do without being afraid of getting into trouble and without other people telling us we can't do it. Ask students if they can think of any examples of rights that we all have.

6. Tell students that another right we have is the right to go to the church, synagogue, temple, or hall of our choice. Ask students why they think this is an important right, and what might happen if we didn't have the right.

7. Tell students that the Bill of Rights gives us many other rights that they will learn about later.

8. If you will be having a birthday party with refreshments at this time, tell students that it is now time to have a real birthday party for the Bill of Rights. Distribute refreshments as planned by you and the teacher ahead of time, and ask students to sing "Happy Birthday" to the Bill of Rights. (If you are not having a birthday party, you may want to have the students draw pictures of a birthday party.)

9. Thank the teacher and students for inviting you to visit their classroom.

10. Before you leave, don't forget to collect a completed evaluation form from the teacher.

Preparing Students for the Lawyer or Law Student's Visit

1. Review any lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping them learn about something called the Bill of Rights.
3. Make the necessary arrangements and/or adjustments for the Bill of Rights birthday party if you and the lawyer or law student have agreed to have one.

Follow-Up Activities

1. Have students draw pictures of a Bill of Rights birthday party.
2. Identify and read stories to the students on Bill of Rights-related issues.
3. Invite a constitutional historian to visit the classroom to share information with the students on what life was like in colonial America.
4. Have students cut out rights-related magazine pictures for a class collage.
5. Invite parents to a Bill of Rights birthday party and ask them to wear an article of colonial-style clothing.

Lesson 2: Rights in Rogertown
(K-3)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce students to the concept of rights and to the Bill of Rights. Specific objectives are to:

1. Develop students' understanding of the concept of rights;
2. Introduce students to the Bill of Rights;
3. Develop students' awareness and understanding of the concepts of freedom of speech, freedom of the press, and freedom of religion as examples of rights protected by the Bill of Rights; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

Bill of Rights
freedom
freedom of press
freedom of religion
freedom of speech
rights

Getting Ready for the Lesson

1. This lesson can be presented in approximately 20-25 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you will be sharing with students during your visit.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that five and six year olds can understand. (See Glossary)

6. Review the lesson materials.

7. Make sure you have a sufficient number of copies of any additional handouts and an evaluation form for the teacher.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Tell them who you are and what it means to be a lawyer or law student. Give them a simple example such as "helping people prove they are not guilty when they have been accused of committing a crime," or "helping people prove that they have been treated unfairly," or "helping to prove someone is guilty of committing a crime."

2. Tell students that you are going to read a very short story to them called "Rights in Rogertown," page 25. (For second and third graders, distribute copies of the story and ask them to read along with you. For kindergarteners and first graders, just read the story.)

3. Ask students if they would like to live in Rogertown. Most students will say no. Ask them to tell you why they wouldn't want to live there. (For second and third graders, you may want to list some of their reasons on the board.)

4. Ask students if they think Rogertown and the United States are different. Wait for their responses. Now ask them to tell you how Rogertown and the United States are different. After several students have responded, tell them that one of the things that makes our country different is the Bill of Rights. Explain that the Bill of Rights is a special set of rules that gives us important rights.

5. Ask students if they know what a right is. Accept answers from all volunteers and then explain that a right is something that we can do without being afraid of getting into trouble and without other people telling us we can't do it. Ask students if they can think of any examples of rights that we all have.

6. Tell students that one of the rights that the Bill of Rights gives us is called freedom of speech. Ask students for examples of freedom of speech.

7. Ask students if they think freedom of speech means that we have a right to say anything we want? Most students will say "yes." Then ask them if it means that they can say bad words in class. Most students will say "no." Ask them why not. Ask them if freedom of speech means that it is okay to yell "fire" in a crowded room, even if there isn't a fire. Ask them what they think might happen if someone did yell "fire" in a crowded room. After students have had an opportunity to respond, explain that the Bill of Rights may not protect speech that can hurt other people.

8. Tell students that the Bill of Rights also guarantees freedom of the press. Ask students to tell you what they think this means, why it is an important right, and what would happen if this right was not guaranteed by the Bill of Rights.

9. Tell students that a third right we have is the right to go to the church, synagogue, temple, or hall of our choice. Ask students why they think this is an important right, and what they think might happen if we didn't have the right.

10. Tell students that the Bill of Rights gives us many other rights that they will learn about later.

11. If there is still time, ask students to begin making up their own short stories about places like Rogertown, where people don't have the same rights as we do.

12. Thank the teacher and students for inviting you to visit their classroom.

13. Before you leave, don't forget to collect a completed evaluation form from the teacher.

NOTES FOR THE CLASSROOM TEACHER

Preparing Students for the Lawyer or Law Student's Visit

1. Review any lesson materials provided by the lawyer or law student.

2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to learn about something called the Bill of Rights.

Follow-Up Activities

1. Have students draw pictures of Rogertown. (Older children can be encouraged to draw pictures of some of the signs that might be posted around Rogertown.)

2. Identify and read stories to the students on Bill of Rights-related issues.

3. Invite a constitutional historian to visit the classroom to share information with the students on what life was like in colonial America.

4. Have students act out the story for their parents or for other classes.

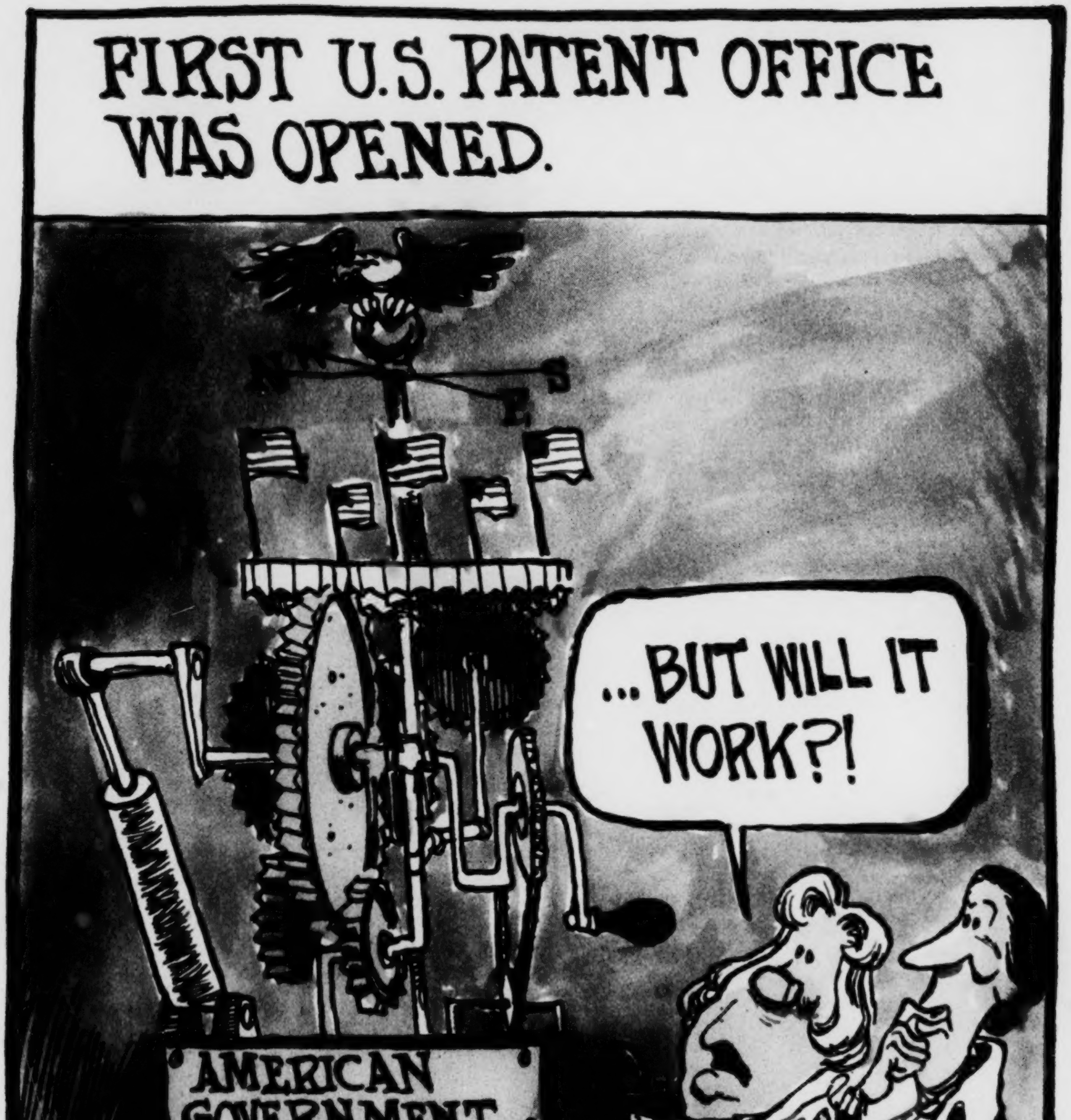
RIGHTS IN ROGERTOWN

Rogertown is the name of a faraway, make-believe place where many people live. Rogertown is ruled by a wicked king named Roger. King Roger says everything must be done his way or else. In Rogertown, you can't say anything bad about King Roger or he'll have you put in jail. One of the citizens of Rogertown once said that King Roger was a very cruel man. That person disappeared and hasn't been seen or heard from since.

In Rogertown, people read the *Rogertown Times*. It is their only newspaper. King Roger won't allow anything bad about himself to be printed in this paper, and he won't allow any other newspapers. Once someone sneaked an article into the *Rogertown Times* that said King Roger was a "fat, greedy pig and deserved to be hanged by his thumbs in the town square." The person didn't sign his name but King Roger found out who it was anyway. And what do you think happened to the man who wrote the article? Right. He was found the next morning hanging by his thumbs in the town square.

In Rogertown, people must attend the Church of Roger. They have no other choice. They can't even stay at home instead of going to church. They are expected to attend the Church of Roger every week.

Do you think the citizens of Rogertown lived happily ever after?



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Lesson 3: Rights and Responsibilities

(2-3)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce students to the concept of rights and to the Bill of Rights. Specific objectives are to:

1. Develop students' understanding of the concept of rights;
2. Introduce students to the Bill of Rights;
3. Develop students' awareness and understanding of the concepts of freedom of speech, freedom of the press, and freedom of religion as examples of rights protected by the Bill of Rights;
4. Develop students' understanding of the relationship between rights and responsibilities; and
5. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

Bill of Rights
freedom
freedom of press
freedom of religion
freedom of speech
responsibilities
rights

NOTES FOR THE LAWYER OR LAW STUDENT

Getting Ready for the Lesson

1. This lesson can be presented in approximately 20-25 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you will be sharing with students during your visit.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that seven and eight year olds can understand. (See Glossary)

6. Review the lesson materials.

7. Make sure you have a sufficient number of copies of any additional handouts and an evaluation form for the teacher.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Tell them who you are and what it means to be a lawyer or law student. Give them a simple example such as "helping people prove they are not guilty when they have been accused of committing a crime," or "helping people prove that they have been treated unfairly," or "helping to prove someone is guilty of committing a crime."

2. Write the word "right" on the board and ask students if they know what a right is. Accept answers from all volunteers, and then explain that a right is something that we can do without being afraid of getting into trouble and without other people telling us we can't do it. Ask students if they can think of any examples of rights that we all have.

3. Now write the words "Bill of Rights" on the board. Ask students if any of them can tell you what the Bill of Rights is. After students have had an opportunity to respond, tell them that the Bill of Rights is a special set of rules that gives us important rights.

4. Tell students that one of the rights that the Bill of Rights gives us is called freedom of speech. Ask students for examples of freedom of speech.

5. Ask students if they think freedom of speech means that we have a right to say anything we want? Most students will say "yes." Then ask them if it means that they can say bad words in class. Most students will say "no." Ask them why not. Ask them if freedom of speech means that it is okay to yell "fire" in a crowded room or theater, even if there isn't a fire. Ask them what they think might happen if someone did yell "fire" in a crowded room or theater. After students have had an opportunity to respond, explain that the Bill of Rights may not protect speech that can hurt other people.

6. Tell students that the Bill of Rights also guarantees many other freedoms like freedom of the press and freedom of religion. Ask students to tell you what they think these rights mean, why they are important rights, and what would happen if these rights were not guaranteed by the Bill of Rights.

7. Tell students that the Bill of Rights gives us many other rights that they will learn about later.

8. Tell students that along with these important rights come certain responsibilities. Ask them for examples of the kinds of responsibilities that go along with the right of free speech. (If necessary, refer them back to the example of yelling "fire" in a crowded room or theater.)

9. Ask students for other examples of responsibilities that go along with important rights that they have.

10. Distribute the worksheet called "My Rights and Responsibilities." Review the worksheet with the students and have them complete the worksheet one question at a time. After each question, ask a few students to share their answers with the entire class. If there is sufficient time, have students complete the entire worksheet in this manner. If not, tell students that they should complete the worksheet on their own.

11. Thank the teacher and students for inviting you to visit their classroom.

12. Before you leave, don't forget to collect a completed evaluation form from the teacher.

Preparing Students for the Lawyer or Law Student's Visit

1. Review any lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to learn about something called the Bill of Rights.

Follow-Up Activities

1. Have students make posters illustrating important rights and responsibilities.
2. Identify and read stories to the students on Bill of Rights-related issues.
3. Invite a constitutional historian to visit the classroom to share information with the students on what life was like in colonial America.
4. Have students roleplay what it would be like to live in a country without:

    a. freedom of speech
    b. freedom of the press
    c. freedom of religion

My Rights and Responsibilities[5]

You have certain rights while you are at school. One of these rights is to have your very own desk. You also have responsibilities. Can you name one thing about your desk that you are responsible for? What is it? ______________________________

Good! Now list three other rights you have at school, then describe one responsibility you have for each of these rights.

RIGHTS	RESPONSIBILITIES
1. ________________________	1. ________________________
2. ________________________	2. ________________________
3. ________________________	3. ________________________

Now list three rights you have at home, and three responsibilities. Remember that a right is something you have permission to do. For example, you may have the right to own a pet, but you also have the responsibility to feed it and take care of it.

RIGHTS	RESPONSIBILITIES
1. ________________________	1. ________________________
2. ________________________	2. ________________________
3. ________________________	3. ________________________

You also have rights and responsibilities in your community. Three of these rights are listed below. Describe three responsibilities you have in order to keep these rights.

I have the right to visit and enjoy parks, but I have the responsibility to ______________

____

I have the right to go shopping, but I have the responsibility to ____________________

____

I have the right to ride a bicycle, but I have the responsibility to __________________

____

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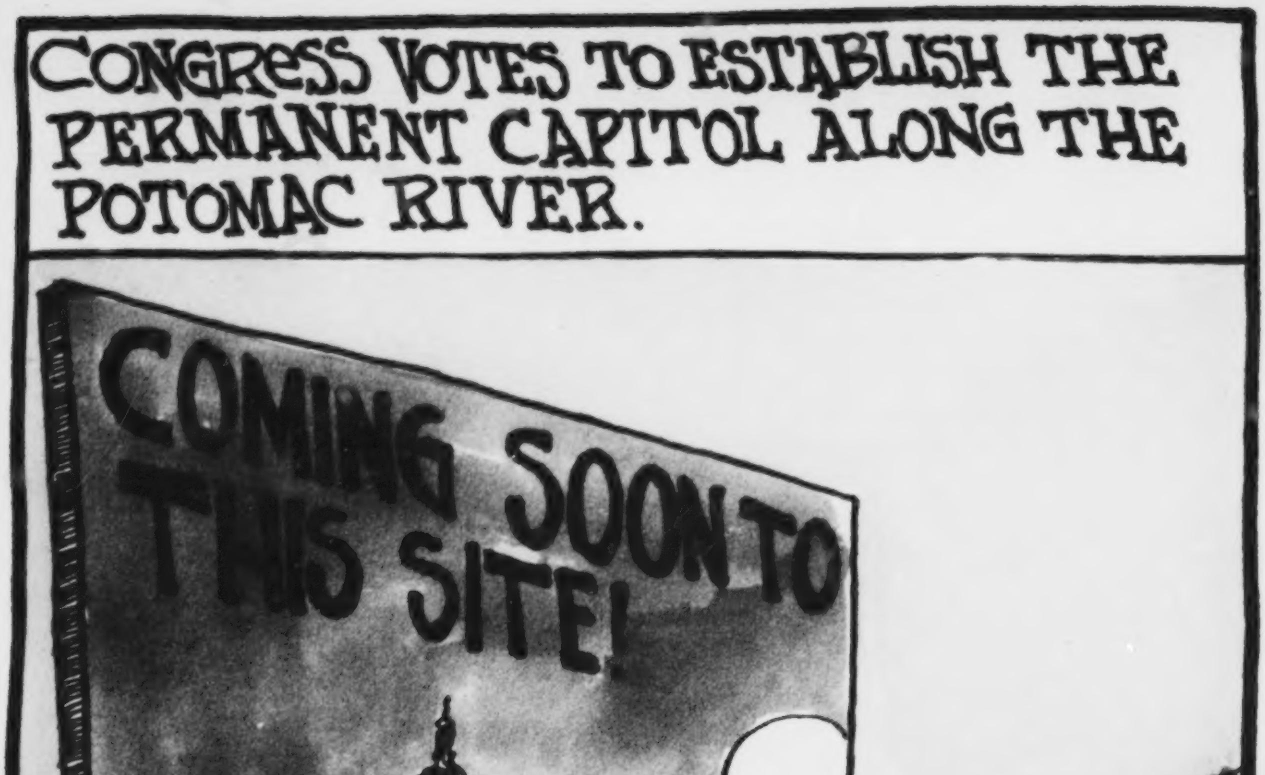
[5] Reprinted from Riekes, Linda; Edmonds, Mabel; and Hill, Janice. *Citizenship Today and Tomorrow.* St. Louis, MO: Law and Citizenship Education Unit, Division of State and Federal Programs, St. Louis Public Schools, 1987, p. 79.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Lesson 4: The Case Of North Harmony Middle School

(4-5)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the First, Fourth, Fifth, Eighth, and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

constitutional
cruel and unusual punishment
delinquent
due process
Eighth Amendment
equal protection
First Amendment
Fifth Amendment
Fourteenth Amendment
Fourth Amendment
Miranda warnings
probable cause
reasonable searches and seizures
reasonable suspicion
regulation
right to privacy
unconstitutional
unreasonable searches and seizures

NOTES FOR THE LAWYER OR LAW STUDENT

Getting Ready for the Lesson

1. This lesson can be presented in approximately 25-30 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson students will need to read "The Case of North Harmony Middle School," Student Handout 4-1.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that nine and ten year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Spend a few minutes telling the students who you are and what you do.

2. Ask students if they enjoyed reading the North Harmony case and if they think they identified all the facts. Briefly review the case for them. Ask students to raise their hands to volunteer facts about the case. Be sure each fact is accurate before writing it on the board for all student to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed, but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the Case of North Harmony Middle School are fair or if they violate the U.S. Constitution.

5. Distribute a copy of the case questions, Student Handout 4-2, to each student. Starting with question number 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with each response. Asks two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the'answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question or until your visit has reached the 25 or 30 minute point. After 25 or 30 minutes, tell the students that they can try to answer the remaining questions on their own, using the Bill of Rights as a reference.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 35 minutes.

NOTES FOR THE CLASSROOM TEACHER

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 4. Ask students to read the case description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

The Case of North Harmony Middle School

Ms. Eve Stropping, the principal of North Harmony Middle School, was concerned about students bringing cassette tapes to school. She thought it got in the way of their school work. The school board passed a regulation which prohibited bringing cassette tapes to school. The regulation was posted on the school bulletin board and sent home to every parent and student.

The students were angry. They talked about what to do about it between classes and in the school cafeteria. They did not know that there was a tiny microphone in the lunch room which transmitted everything they said to the office of Ms. Stropping. Stropping overheard one student, "We ought to break that rule, it's completely unfair!"

The next day, the principal told the music teacher, Fred Mosart, to stop all of the boys entering the school and search them for cassette tapes. In the pants pocket of Roland Rocken, Mr. Mosart found a cassette tape by the rock group called Hurt. One of the songs, "You Gotta Hurt," had these words: "Hurt your Mom, Hurt your Dad, Hurt your little brother, too." He turned over the tape to Ms. Stropping.

Ms. Stropping called Roland Rocken to her office and gave him the following punishment for breaking the no-cassette rule: he had to spend the rest of the day meditating or praying, starting the next morning he was to be suspended from school for six months, and he had to spend the next 30 weekends cleaning the school. Principal Stropping then asked him if he had done anything else wrong. He replied, "I stole the tape from a record store."

Based on a call from Principal Stropping giving all of the above information, the juvenile court authorities charged Rocken with possessing a record or tape which encourages children to commit acts of violence. At his juvenile court hearing, Rocken's statement that he stole the tape was used to prove that the tape was in his possession. The judge sent him to the state training school for delinquents for one year.

CASE QUESTIONS

The Case of North Harmony Middle School

1. Is the school board regulation constitutional? Why or why not?

2. Do students have a right to privacy in their discussions in a school cafeteria? Explain your answer.

3. Was the search of Rocken by Mr. Mosart a reasonable one under the Fourth Amendment? Why or why not?

4. Is there a denial of equal protection by only searching the boys and not the girls? Explain your answer.

5. Does a punishment of prayer or meditation violate Rocken's free exercise of religion? Why or why not?

6. Is 30 weekends of manual labor cruel and unusual punishment? Explain your answer.

7. Can Rocken be suspended for six months without a hearing or does this violate due process under the law? Explain your answer.

8. Must the statement to Stropping be excluded from the juvenile court hearing since she did not give Rocken his Miranda warnings which include the right to remain silent, the right to a lawyer, and the right to have a lawyer present when questioned? Why or why not?

9. Can children be punished for possession of a tape which calls for violence? Explain your answer.

Answers/Discussion Perspectives--For the Legal Resource Person

1. Although rights of students at school are less than that of adults in society, they still have some rights, including First Amendment rights as held in the case of *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969) which held a school's prohibiting the wearing of arm bands was a deprivation of free speech rights, at least where there was no indication that the wearing of the arm bands would cause serious disruption. On the other hand, the Court has permitted censorship of a student newspaper by the principal where the publishing of the paper was done in conjunction with a journalism course, *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988).

2. Clearly, if the police placed a bug in a person's home without probable cause or a warrant, that would violate the Fourth Amendment, as would placing it in a phone booth. But doing so in a public place, or in a jail, would probably be permissible. In a school lunchroom the students would argue that this is more like a home than a park and therefore they have some expectation to be free from such privacy invasions. In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the Court held the Fourth Amendment does apply in watered-down form to the search of a student's purse, but left open what protections would apply if the search was of school property such as a locker or desk. In *T.L.O.*, there was reasonable suspicion to search the purse for violation of school regulations but no warrant; the search was permissible. In this case, there may not be reasonable suspicion.

3. The Court has recently upheld stops of cars at checkpoints without warrants and without suspicion to see if the driver appeared to be driving while intoxicated, *Michigan Dept. of State Police v. Sitz*, 110 S.Ct. 2481 (1990). The stop and search of Rocken was more intrusive (Mosart searched his pants), the reasons were less important than stopping drunken driving, but the school setting under *T.L.O.* is one where there may be less privacy than in a car.

4. No reason appears why only boys are searched; where prosecutions are carried out in a discriminatory fashion, equal protection challenges have been upheld, *Yick Wo v. Hopkins*, 118 U.S.356 (1886). Discrimination on the basis of sex is usually not permitted by the Court--only if the state has an important reason to treat people differently on the basis of sex, and then only if the non-discriminatory approaches wouldn't work, will the state's action be upheld. Note also that the Constitution can be violated by the act of an official of government (a public school official here), not just an unconstitutional law passed by the legislature.

5. The Establishment Clause has prohibited school officials from reading prayers or Biblical passages or from requiring students to remain silent for prayer. This punishment goes even further since it is compelling a student to pray or meditate, and it violates the Free Exercise Clause as well. Usually, students are excused from praying if they don't want to, but even then, the Court finds the student is under peer pressure to do so.

6. Corporal punishment has been upheld in the schools since the Eighth Amendment's prohibition of cruel and unusual punishments does not apply to the school setting, *Ingraham v. Wright*, 430 U.S. 651 (1977); therefore, the required working would not be considered to be cruel and unusual punishment. The punishment of manual labor might, however, violate Rocken's liberty interest protected by the Fourteenth Amendment unless there was a hearing prior to the punishment, although the Court held in the corporal punishment case that there was no need for a hearing before corporal punishment could be inflicted.

7. Even for very short school suspensions, hearings are required as a matter of due process, *Goss v. Lopez*, 419 U.S. 565 (1975). Here, Rocken might want to contend he didn't know about the rule or that he had some reason for violating the rule--at least he should have the chance to explain his side of the story.

8. *Miranda v. Arizona*, 384 U.S. 436 (1966), requires warnings where there is custody and interrogation, but typically that occurs only where police do the questioning. Here, Rocken would argue that Principal Stropping was really acting for the police since she immediately contacted them. Ms. Stropping would say that school officials are not part of law enforcement and it would totally disrupt her role as educator and disciplinarian to have to give Miranda warnings every time a student was questioned.

9. There are categories of speech which are not protected by the First Amendment such as obscenity, fighting words, and defamation, but most speech is protected unless there is an immediate danger of the speech causing harm, such as falsely yelling "fire" in a crowded theater. There is no way of showing that the lyrics were going to do that. However, since children are involved, the courts might give the state greater leeway to regulate speech than if it were adults, on the grounds that children might be more prone to carry out acts of violence after hearing the lyrics on a record or tape.

Lesson 5: The Case Of New Trend Middle School

(4-5)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the Fourteenth Amendment;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

constitutional/unconstitutional
cross-examination
equal protection
Fourteenth Amendment
right to confront accusers

Getting Ready for the Lesson

1. This lesson can be presented in approximately 25-30 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit. In this instance, the case description is so brief that it doesn't need to be distributed ahead of time.)

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that nine and ten year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Spend a few minutes telling them who you are and what you do.

2. Distribute a copy of the Case Description, Student handout 5-1, and Case Questions, Student Handout 5-2, to each student. Ask student to read along silently as you read the case aloud.

3. Ask students to raise their hands to volunteer facts about the case. Be sure each fact is accurate before writing it on the board for all students to see.

4. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

5. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the Case of New Trend Middle School are fair or if they violate the U.S. Constitution.

6. Now have students discuss the case questions. Starting with question number 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

7. Continue as in 6 above for question number 2.

8. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

9. Ask students to think of ways in which the Bill of Rights affects their lives every day, and list them on the board.

10. When your visit has reached the 25 or 30 minute point, close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

11. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 35 minutes.

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 5. Ask students to read the case description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

The Case of New Trend Middle School

The sixth grade class of New Trend Middle School went on the annual all-day trip to a state park. By school board regulation, the following rules were adopted:

1. The girls must cook, clean up, and wait on the boys at the meals.
2. The boys must chop the wood and do all the heavy chores.
3. No student will write about the trip in the school newspaper.
4. All students must have a neat appearance.

Violation of any rule could result in a five day suspension from school.

CASE QUESTIONS

The Case of New Trend Middle School

1. Jane Wright refused to wait on the boys, saying: "Let those slobs get their own food!" If she is suspended, what constitutional arguments can she use to support her actions?

2. The principal of the school was sent an anonymous note which said that one of the boys, Paul Brown, refused to chop any wood. Paul was immediately suspended for five days. What constitutional arguments can Paul use against the suspension?

3. Peter Ziller wrote a story for the New Trend Middle School newspaper about Jane's statement and Brown's suspension. The principal refused to let the story be printed. What constitutional issues are raised by the principal's action?

4. Martin Harris had shoulder-length hair which the principal ordered cut off to comply with the neat appearance rule. Must Martin have a hair cut?

Answers/Discussion Perspectives--For the Legal Resource Person

1. Since only girls were required to wait on the boys, the issue is one of sex discrimination. The Supreme Court has upheld some laws which treat males and females differently, for example, a law which required only males to register for the draft, *Rostker v. Goldberg*, 453 U.S. 57 (1981). In recent years, however, most laws which treat males and females differently have been held to violate the equal protection clause. For example, states cannot permit females to drink at age 18 and males at 21 on the basis that males are more likely to drink and drive, *Craig v. Boren*, 429 U.S. 190 (1976). Nor can a state have a female only nursing school, *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982).

   However, compensating women for past sex discrimination has been upheld not to violate laws prohibiting discrimination on the basis of sex, even without proof that a particular employer has discriminated, *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987).

   Are there some jobs which should be reserved for women, on the grounds they can better do the job, for example, being a counselor in a police department for victims of sex crimes, or would this be stereotypical, assuming that women can relate better to women? Had the Equal Rights Amendment* become part of the Constitution, the courts would have had to determine whether or not it would permit any classifications based on sex. The Equal Rights Amendment said: equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

2. Paul will claim he is deprived of his liberty without due process, a denial of procedural due process. He was denied the right to a hearing where he could seek to show that the writer of the anonymous letter was unreliable, that the writer held a grudge against Paul, or that the letter writer wasn't present at the time Paul refused to chop the wood. In particular, he would want the right to confront the letter writer at the hearing and cross-examine him or her to show unreliablity.

   The school would point out that the suspension is for a short time and that full hearing rights are not necessary for minor punishments; also, cross-examining fellow students would lead to fights at school and make students afraid to tell the administration what happened in the future.

   The Supreme Court held in the case of *Goss v. Lopez*, 419 U.S. 565 (1975), that a student is entitled to an informal hearing even before a brief suspension.

   Like Jane, Paul would also claim the rule only required boys, not girls, to chop wood and thus the rule violates equal protection.

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*The Equal Rights Amendment was proposed as an amendment to the Constitution to prevent laws from discriminating against persons because of their sex.

3. If the government tried to prevent the publication of a story in a newspaper outside the school setting, it would be prevented from doing so because of the free press clause of the First Amendment. In only the rarest of circumstances can a paper be prohibited from printing a story. Examples of when that would be permitted would be if a newspaper were going to print the date and time U.S. armed forces were going to attack an enemy during wartime. Since giving that information to the enemy would endanger lives of the soldiers, the First Amendment interest would be outweighed. Less serious consequences, such as publication of information which would be embarrassing to the government, would not permit government censorship. Therefore, the United States was unable to prevent distribution by several newspapers of the Pentagon Papers, which included information which would be embarrassing to the United States.

   In a school setting, the free press protections of the First Amendment are not as strong, and in one case, *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260 (1988), the principal could prevent the publication of student articles written in connection with a course in journalism. In Ziller's case, however, the newspaper was written independently of a course, and the articles are not as damaging as those involved in the Hazelwood case. In another Supreme Court case involving the First Amendment in the school, *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969), the Court would not allow the suspension of students for wearing arm bands, since it was not shown that exercising free speech rights would lead to serious disruption in the schools. If that test were used in Ziller's case, it is unlikely that printing those articles would result in serious disruption.

4. Martin would rely on two parts of the Constitution: the due process clause of the Fourteenth Amendment and the Ninth Amendment.

   Under due process, he would say that he has a liberty interest in his personal appearance which cannot be taken away by state officials. In a case brought by police who challenged a department rule banning long hair, *Kelley v. Johnson*, 425 U.S. 238 (1976), the Supreme Court upheld the regulation, but observed that there may be special reasons why police have to have short hair which would not apply to private citizens.

   The Ninth Amendment says: The enumeration in The Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. Its purpose was to make sure that, merely because the Bill of Rights listed certain rights which the United States could not take away, that did not mean the United States could take away all other rights not mentioned. Some courts have said that one of these rights which the Ninth Amendment protects is the right not to be interfered with in matters of personal appearance. One problem of the Ninth Amendment is to figure out just what those rights are which can't be taken away. Because of the difficulty of that task, the Supreme Court has basically ignored the Ninth Amendment and instead decides such cases under other parts of the Constitution, such as due process.

Lesson 6: The Three Cases of Camp Watchem

(4-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the First, Fourth, Fifth, and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

arrest warrant
constitutional
probable cause
drug testing
due process
exclusionary rule
Fifth Amendment
First Amendment
Fourteenth Amendment
Fourth Amendment
good faith exception
involuntary confession
right to privacy
search warrant
unconstitutional
unreasonable search and seizure
warrantless search

Getting Ready for the Lesson

1. The complete lesson, including all three cases, can be presented in approximately 45-50 minutes. To reduce the lesson time to approximately 30 minutes, eliminate case number 3 and ask students to read that case and answer the case question on their own.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson, students will need to read "The Camp Watchem Cases," Student Handout 6-1 (two pages).

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that nine and ten year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students if the teacher has not already done so. Spend a few minutes telling students who you are and what you do.

2. Ask students if they enjoyed reading the Camp Watchem cases and if they think they identified all the facts. Briefly review the cases for them. Ask students to raise their hands to volunteer facts about each case. Be sure each fact is accurate before writing it on the board for all students to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about each case.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the Camp Watchem cases are fair or if they violate the U.S. Constitution.

5. Refer students back to the descriptions of the cases. The case questions are also included on this page. Starting with question 1 for case 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Asks two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the'answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question or until your visit has reached the 30 minute point (for grades 6-8, the 45 minute point). Tell the students that they can try to answer the remaining questions on their own, using the Bill of Rights as a reference.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 25-35 minutes for grades 4-5, or 45-50 minutes for grades 6-8.

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 6. Ask students to read the case descriptions and identify as many of the facts as possible. Have them list the facts on the bottoms or reverse sides of the case description sheets. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the first ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

The Camp Watchem Cases

Camp Watchem is a state boys' camp located near the town of Portage. Boys are sent there from all over the state by the juvenile courts when their parents can't control them.

The camp seems to be like any other, but there are some differences. None of the boys is aware of the following things:

- The cabins, boats, restrooms, cafeteria, and every place else is equipped with tiny microphones, called "bugs," which pick up even the slightest whispers and send them back to the camp director's headquarters where the conversations are recorded 24 hours a day.

- All the trees are sprayed with a secret formula which can detect drug use from the sweat of a person touching the tree.

Case # 1: Jose and George

One night the director of the camp, Martin Stone, was monitoring the bugs and overheard a conversation coming from cabin 24 where some of the older boys stayed. "Remember," said the boy in upper bunk # 2, "we pick up our shipment at the dock in exactly two minutes." Thinking that this meant a shipment of drugs, Mr. Stone called the narcotics strike force of the Portage Police Department. When Mr. Stone arrived at the dock, the boys from cabin 24 were already there bending over a motorboat that had just pulled up.

Just as the driver of the boat was handing something to the boys, Mr. Stone said from behind,"I'll take that." It was a stringer of 22 fish. At this point, the police came out onto the dock, Mr. Stone pointed out that none of the fish was large enough to keep, and the police arrested all of the boys for receiving undersized fish. The boys were searched, and in the pajama pocket of Jose, the police found a small amount of "crack."

All the boys except Jose were told to go back to their cabin. Jose was taken to Mr. Stone's house where Mr. Stone asked him who supplied him with the "crack." Jose refused to talk, but changed his mind after Mr. Stone threatened to call his parents to remove him from camp, making it likely he would be sent to a juvenile detention facility. "The supplier of the 'crack' is George," cried Jose, "but don't tell him I told you." George was in charge of the swimming program at the camp.

It was now 2:00 a.m. Mr. Stone and the police went to George's tent, burst in, saw large amounts of "crack" on the table, and arrested George.

George was tried and convicted of drug-related crimes. After a hearing before a juvenile court judge, Jose was sent to a facility for juvenile delinquents for three years. George was sent to the state penitentiary for four years. What constitutional issues are raised by these cases?

Case # 2: James

James was a camp counselor who jogged at all times of the day and night. One night, after six miles, he brushed against a pine tree. The sweat from his arm rubbed off on the drug-sensitive tree and, since it tested positive for drugs, a net dropped from the tree, catching James. (The drug test is accurate approximately 50 percent the time.) Director Stone went to the tree where James lay trapped, inserted a stomach pump in James's throat to collect any evidence of drugs, and pumped out three milligrams of cocaine.

James was tried, convicted, and sentenced to 25 years in prison. Should his conviction be upheld as constitutional? Why or why not?

Case # 3: Dwayne

Dwayne was a camper. His favorite thing to do was to listen to rock music. The song he most liked to listen to was by the punk rock group, Peaceful Kill, entitled "Hit, Man, Your Counselor." The song goes like this:

> When you're asked to make your bed,
> Sweep your cabin or you don't get fed,
> Keep your cool and don't get red,
> Smash the fool right on his head.
>
> Hit, man, your counselor,
> Every which way you can.
> Hit, man, your counselor,
> You've got to have a plan.

New camp rules do not permit listening to any tapes. One of the counselors took James's tapes and turned them over to Director Stone. Stone listened to the tape and decided to turn it over to the state police because of the violence in the lyrics. State law made it a crime to listen to a tape which calls for violence.

Does it violate the U.S. Constitution and the Bill of Rights to put James in a juvenile detention facility for possessing a tape of the song, "Hit, Man, Your Counselor?" Explain your answer.

Answers/Discussion Perspectives--For the Legal Resource Person

Case # 1: Jose and George

A. Jose

1. Is the Fourth Amendment violated by the use of bugs?

Jose would argue that he has an expectation of privacy, particularly in private places like his bed in his cabin in the middle of night. He would argue that he has a right not to be monitored by a state official unless there is probable cause that he has committed a crime and a warrant has been obtained from a court, relying on the case of *Katz v. United States*, 389 U.S. 347 (1967). Even though electronic monitoring devices weren't invented at the time the Fourth Amendment became part of the Constitution in 1791, the Fourth Amendment--and all of the Bill of Rights--must be read with its general principles in mind and applied to new situations. Since the framers were concerned about privacy of the individual, the Fourth Amendment should be read to regulate the use of bugs.

The state would say that the framers of the Constitution in 1791 didn't know about bugs--so they couldn't have intended to ban such technology. The state would argue that it is not the job of the courts to keep the Constitution modern but to be concerned only about the specific abuses which motivated the framers of the Constitution. If new problems arise then amend the Constitution, don't have judges rewrite it.

Further, the state would argue that the camp is in effect a prison for young people and therefore there are no privacy rights in the cabins. The state would rely on cases which hold that prisoners have no privacy rights in their cells, *Hudson v. Palmer*, 468 U.S. 517 (1968), as well as cases which hold that students have fewer Fourth Amendment rights in schools than adults do in society, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985).

2. If the Fourth Amendment is violated, should the evidence be excluded as well as everything discovered as a result of the violation?

Why do we keep out the evidence, and if that is all that points to a defendant's guilt, we let the guilty person go free? Isn't it better to punish the state officials, usually the police, and not put someone we know is guilty back on the street?

Yet, if we admit the evidence, in clear violation of the Constitution, is there any other effective way to deter police from violating the Fourth Amendment? What about taking away the license of the officer for violating the Constitution? Several states now have that power, called decertification.

Since 1914, the Supreme Court has excluded evidence from federal trials which has been seized in violation of the Fourth Amendment, *Weeks v. United States*, 232 U.S. 383 (1914). The term used for such exclusion is the "exclusionary rule." The Court applied the "exclusionary rule" to state trials in the case of *Mapp v. Ohio*, 367 U.S. 643 (1961). If the police seize the evidence in violation of the

Fourth Amendment, but they were relying in good faith on a warrant which was issued by a judge, then the exclusionary rule does not apply, *United States v. Leon*, 468 U.S. 897 (1984).

3. Is there a need for a search warrant before Jose can be searched?

Although generally warrants are needed to search, there is an exception permitting warrantless searches made incident to an arrest. The rationale for this exception to the warrant requirement is that, if the officer had to go to court to get a warrant to search, the suspect may take a weapon from his pocket and shoot the police officer, or remove incriminating evidence and destroy it.

But what if the offense for which the person is arrested does not involve weapons or destructible evidence, such as a traffic offense? If state law permits arrests of persons for such crimes as possession of undersized fish, the search is valid, even if there is no possibility the person has a weapon or will destroy evidence, *United States v. Robinson*, 414 U.S. 218 (1973).

B. George

1. Does George have standing to object?

Normally, a person can only object to violation of his or her constitutional rights, so the threat to Jose which caused the confession is of no concern to George; he has no standing to complain for the violation of Jose's rights. The Court has so held with respect to the Fourth Amendment, *Rakas v. Illinois*, 439 U.S. 128 (1978). This case could be distinguished on the grounds that the confession was involuntary and was a more serious constitutional violation than a Fourth Amendment violation; therefore, to protect people like Jose, third parties should be able to raise violation of certain constitutional rights. George can also argue that Jose's confession was taken under duress in violation of due process and was not reliable, but reliability is generally a matter of state law, not the U.S. Constitution. See *Colorado v. Connelly*, 479 U.S. 157 (1986).

2. Is there a need for an arrest warrant to arrest George in his tent?

In general, arrest warrants are required to arrest a person in his or her home--even if there is probable cause to arrest, a warrant is required. No warrant is required to arrest a person in public for a felony. Search warrants are generally required before the police can search, whether in public or in a home, although there are several exceptions to the requirement for a warrant to search.

3. Can the tent be broken into without knocking?

When the police want to search or arrest in the home, there may be a state constitutional requirement that officers must knock and announce who they are and why they want to come in, both to protect the officer from being shot by the home owner who might think an intruder is breaking in, and to protect the privacy of the home owner. That may also be a requirement of the Fourth Amendment. The state would argue that a tent is not a home--how can one knock on a tent?

Case # 2: James

1. Is the drug test permissible?

James would argue that, since there was no reasonable suspicion or probable cause to believe he used drugs, the test was unreasonable under the Fourth Amendment. Although similar drug testing has been upheld by the Supreme Court--for railroad engineers, and some Customs Service officers--those jobs have more serious consequences if a person were using drugs.

The state would argue that serving as a boys' counselor was the kind of job which must be drug free and therefore the testing was reasonable based on the circumstances, even without a warrant or any suspicion at all. Stopping cars at roadblocks to see if the drivers are under the influence of alcohol has been upheld, even where there is no suspicion that a driver has been drinking, *Michigan Dept. of State Police v. Sitz*, 110 S.Ct. 2481 (1990). Further, the intrusion was so minor, there was no seizure at all for purposes of the Fourth Amendment. Once the test was positive, there was probable cause to seize him by the net.

2. Is the stomach pump constitutional?

James would argue that such an intrusive bodily invasion has been held to violate due process because it shocks the conscience, *Rochin v. California*, 342 U.S. 165 (1952). (It would not violate the Fifth Amendment privilege against self-incrimination since that applies only to testimonial evidence.) James would also argue that it would also violate the Fourth Amendment as an unreasonable search and seizure because it was so intrusive, even though probable cause exists, and even if a court issued a search warrant. In *Winston v. Lee*, 470 U.S. 753 (1985), the Court held that surgery performed on a defendant to remove a bullet violated the Fourth Amendment, even though there was probable cause and a court order to retrieve it.

The state would argue that there was a compelling need to use the pump to retrieve the drugs since there was no other way to do so and that the drugs would have disappeared if the police had to obtain a warrant.

#3 Dwayne

1. Can tapes be banned? What about books? Does the First Amendment protect what children can read or listen to?

Dwayne will argue that the First Amendment does give protection to tapes, just as it does to books, movies, plays and paintings. It also applies to children, as in the case of *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969), which did not permit the school to ban the wearing of arm bands to protect the Vietnam war.

The state will point out that children have fewer rights than adults, for example, schools can limit what is appropriate for school newspapers in a journalism class, *Hazelwood School Dist. v. Kuhlmeier*, 487 U.S. 260 (1988), although the state could not limit the content of regular newspapers.

2. Can violent lyrics be banned? If pornography can, why not violence?

   Obscenity is not protected by the First Amendment, but the Supreme Court has not said that violent expression can be banned, unless there is an immediate danger that illegal acts will follow the expression, and there is no showing that this is true from listening to the tape.

Lesson 7: The Case of Tech High School

(6-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the Fourth, Fifth, and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

constitutional
drug testing
due process
exclusionary rule
Fifth Amendment
Fourteenth Amendment
Fourth Amendment
good faith exception
probable cause
search warrant
self-incrimination
unconstitutional
unreasonable searches and seizures
U.S. Supreme Court

Getting Ready for the Lesson

1. This lesson can be presented in approximately 35-40 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson, students will need to read "The Case of Tech High," Student Handout 7-1.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that eleven and twelve year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students, if the teacher has not already done so. Spend a few minutes tell them who you are and what you do.

2. Ask students if they enjoyed reading the Tech High case and if they think they identified all the facts. Briefly review the case for them. Ask students to raise their hands to volunteer facts about the case. Be sure each fact is accurate before writing it on the board for all students to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the Tech High case are fair or if they violate the U.S. Constitution.

5. Distribute a copy of the case questions, Student Handout 7-2, to each student. Starting with question question 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question or until your visit has reached the 30 minute point. After 30 minutes, tell the students that they can try to answer the remaining questions on their own, using the Bill of Rights as a reference.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 45-50 minutes.

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.

2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.

3. Distribute the case description for Lesson 7. Ask students to read the cases description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.

2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.

3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.

4. Invite a constitutional scholar to visit the classroom to share information with the students.

5. Have students write an essay on how the Bill of Rights relates to their lives today.

6. Have students write an essay on the Bill of Rights and the future.

7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.

8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

The Case of Tech High

Tech High is a public high school in San Francisco. The school is known for its drug-free environment. Friday morning at 9:00 is set aside for drug testing when the following takes place: students are given blood tests at random; all students and their personal belongings are searched; lockers and desks are searched; and cars on the school parking lot belonging to the students are searched. If drugs are found in any of these searches, the student is permanently expelled from school and the evidence is given to the police for prosecution. A student who refuses to submit to any of the searches is also expelled from school. Finally, any student who turns in a fellow student for drug use which results in an expulsion is given a $50 reward.

Mary is in the 10th grade. Her blood test showed she had been using drugs. The assistant principal, Mr. Kleen, took Mary to the office and asked if she had drugs at home. Mary admitted she had hidden some cocaine under her pillow. Assume that Kleen left the office and told Mary to remain. Using Mr. Kleen's phone, Mary called a friend, telling her to get the cocaine from Mary's house. Unknown to Mary, her conversation was overheard by the principal, Ms. Neet, on an extension phone in the next office. Ms. Neet called the police who immediately went to Mary's home, walked in (the front door was open), found the cocaine under Mary's pillow, and seized it.

Jason is in the 11th grade. Mr. Kleen found three marijuana cigarettes in a paper bag in Jason's locker.

William is a senior. Mr. Kleen noticed that William seemed groggy, as though he was on drugs. As required by the rules, William gave Mr. Kleen his car keys to search his car for drugs. Mr. Kleen searched the car and hidden in the trunk was a loaded, sawed-off shotgun which Mr. Kleen seized.

Cheryl is a senior. She was turned in by her best friend, Samantha, who told Mr. Kleen that she had witnessed Cheryl using drugs the previous weekend. Cheryl was expelled based on Samantha's report. Samantha was given $50.

CASE QUESTIONS

The Case of Tech High

1. Was the blood test of Mary an unreasonable search and seizure under the Fourth Amendment to the United States Constitution? Why or why not?

2. Should Mary's statement to Mr. Kleen that she had hidden cocaine under her pillow be admitted in her trial? Explain your answer.

3. Was the privilege against self-incrimination violated by the blood test? Why or why not?

4. Was it unconstitutional for Ms. Neet to listen to Mary's conversation? Did the drafters of the Constitution intend that eavesdropping on phone conversations was to be prohibited by the Constitution? Does it matter what they intended? Explain your answers.

5. How does the Bill of Rights (the first ten amendments), written to limit the powers of the United States, apply to the states?

6. Was the seizure of the cocaine under Mary's pillow constitutional? Why or why not?

7. Was the search of Jason's locker constitutional? Why or why not?

8. Was the search of William's car constitutional? Did his permission to search make a difference? Explain your answers.

9. Assume all of the evidence was obtained in an unconstitutional manner. Should the evidence be inadmissible in the students' trials for drug and weapon possession? Should unconstitutionally obtained evidence always be excluded from trial, no matter how serious the crime and no matter how minor the constitutional violation? Explain your answers.

10. Assume in Jason's case that inside the bag with the marijuana was a receipt marked "paid in full, RLJ." Mr. Kleen took Jason to his office and asked who "RLJ" was. Jason said he couldn't tell because he would be beaten up if he told. Mr. Kleen then threatened to expel Jason from school unless he cooperated. Jason then said that RLJ was Ron Jones and that Jones was the major supplier of drugs to students at Tech. Mr. Kleen asked several other students if Jones was a supplier of drugs and all said that he was. Can Jones object to the involuntary confession obtained from Jason which implicated him in drug sales? Explain your answer.

11. Can Cheryl be expelled from school based on Samantha's statement to Mr. Kleen? Why or why not?

Answers/Discussion Perspectives--For the Legal Resource Person

1. The Fourth Amendment normally requires a search warrant issued by a judge and probable cause to believe criminal evidence will be found. In this case, the search (blood test) was without any suspicion directed at Mary and without a warrant. Some random searches have been upheld--at airports (going through metal detectors), at borders coming into and leaving the country, and at checkpoint stops set up to catch drunk drivers, *Michigan Dept. of State Police v. Sitz*, 110 S.Ct. 2481 (1990). Since there has been a relaxed standard of applying the Fourth Amendment in schools, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), it could be argued such random testing is permissible, but it would be an extension of current case law.

2. If Mary was being questioned by the police, she would have to be given the Miranda warnings, *Miranda v. Arizona*, 384 U.S.436 (1966). Whether school officials should also be required to give Miranda warnings has not been determined by the Supreme Court. The arguments in favor are that Mr. Kleen is acting in a police capacity, just as though Mary were at the station, and her right not to incriminate herself should be protected through the four Miranda warnings: she has a right to remain silent; anything she says can be used against her; she has a right to have her lawyer present during the questioning; and if she can't afford a lawyer, one will be provided. The school will argue that this is not a police station, that rules governing police would only interfere with the relationship between students and staff of a school, and that schools are, in effect, acting as the child's parents, in a helping, not an adversarial relationship.

3. The privilege against self-incrimination protects people from compelled self incrimination. The Court has held that blood testing does not violate the Fifth Amendment since blood is not testimonial. *Schmerber v. California*, 384 U.S.757 (1966).

4. Since there were no phones at the time the Fourth Amendment was written in 1791, it could be argued the drafters of the amendment did not intend to ban something they did not foresee. Moreover, the language of the Fourth Amendment does not ban eavesdropping; it is seizing of physical evidence or the person which is the concern. Former Attorney General Edwin Meese, former Judge Robert Bork, and others believe that the Constitution should not be kept current with the times by judges but that the intent of the framers should be the sole concern of the judges. Others, like former Justice William Brennan, believe that a twentieth century judge cannot help but view cases coming to the court with a modern perspective, and that it is impossible to determine with any certainty the intent of the framers in most cases. The Fourth Amendment has been interpreted by the Supreme Court to protect any state intrusion into a person's reasonable expectation of privacy, *Katz v. United States*, 389 U.S.347 (1967) which held that use of the telephone is protected from police surveillance unless there is probable cause to believe a crime is being committed and a warrant from a judge has been obtained.

   This case differs from *Katz* in that it occurs in a school setting, the eavesdropper is a school official and not a police officer, and perhaps it is not reasonable for a student to believe that she can use, without permission, the assistant principal's phone without fear of a school authority overhearing the conversation on an extension phone.

5. The Supreme Court has been applying virtually all of the Bill of Rights to the states through the due process clause of the Fourteenth Amendment which was ratified in 1868. Some argue that this misreads constitutional history and that due process only prohibits fundamentally unfair procedures. Under this approach, the federal courts would be more restricted in what they could do than would the states, but the majority of the Supreme Court believes that most of the Bill of Rights are incorporated into the Fourteenth Amendment.

6. The old saying, "A man's home is his castle," accurately describes the great protection the Fourth Amendment gives to searches of a home. It is rare that a search of a home is valid without probable cause (which was present here, assuming Mary's statement is admissible) and without a warrant. There are narrow situations which do permit warrantless searches--for example, evidence is in the process of destruction or removal. It is arguable that Mary's friend was about to remove the cocaine, but the facts don't show that she was actually doing so. Also, there is usually a requirement under both state and federal law of knocking and announcing your presence as a police officer when searching a home, with or without a warrant. Here, the door was open, but the police could have made known their presence to Mary's parents. The reason for the requirement is that home owners shouldn't be surprised by unannounced visits by the police--and also, the police may be shot at by the home owner who may think a criminal is breaking in.

7. There was no suspicion that Jason had drugs in his locker. In the only student search case getting to the Supreme Court, involving search of a student's purse, the Court held that no warrant was needed but that reasonable suspicion was necessary. But the purse belongs to a student: a locker is the school's, so it is possible that a distinction can be made, that is, a school administrator needs no suspicion to look into school property. However, under *Katz*, it is arguable that a locker is really the student's during the school year and is as deserving of Fourth Amendment protection as a purse.

8. If the police have a person's consent to search, there is no need for cause or a warrant. The consent must be voluntary, and in this case, William consented because if he didn't, he would be expelled from school. Unlike a home, there is no need for a warrant to search a car, assuming there is probable cause, since the car could be moved by the time a warrant was obtained, and also, the Court has held that there is less privacy in a car than in a home.

   In this case, there was no probable cause to search but Mr. Kleen's observation was arguably reasonable suspicion to believe William was under the influence of drugs. Under *New Jersey v. T.L.O.*, searches of purses in the school were permissible upon reasonable suspicion, but the car was not in the school, although it was on the school parking lot. Since it is likely that probable cause would be required, the gun would not be admissible in a trial against Williams for illegal gun possession.

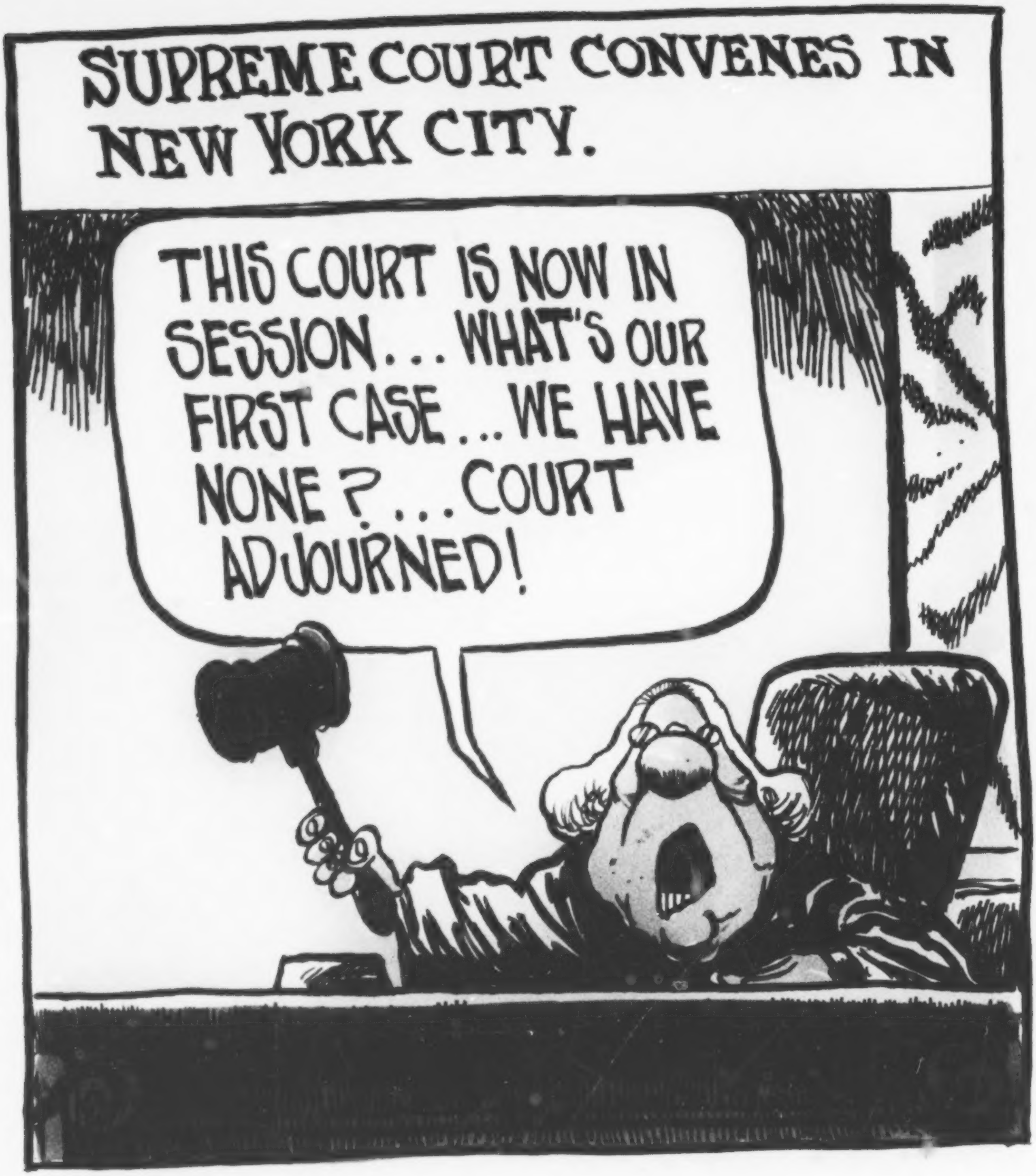
   If the police have the right to search the trunk of the car for drugs, they would be permitted to seize any item that they have probable cause to believe is evidence of a crime. They do not need a warrant. This exception to the warrant requirement is known as the plain view exception.

9. Current Supreme Court cases require that evidence obtained in violation of the Fourth Amendment be excluded from the trial of the person whose Fourth Amendment rights are violated. Critics of the exclusionary rule point out that this lets criminals go free without deterring the police--and that society is thereby hurt. The exclusionary rule does have one exception: if a warrant is issued by a judge and the police rely in good faith on the warrant, even if it turns out the search was unconstitutional, the evidence comes in. This is called the "good faith exception". See *United States v. Leon*, 468 U.S. 897 (1984) and *Massachusetts v. Sheppard*, 468 U.S. 981 (1984).

10. Normally, a person can only object to a violation of his constitutional rights. This has been explicitly held in Fourth Amendment cases, like *Rakas v. Illinois*, 439 U.S. 128 (1978). In this case, Jason's rights were violated under the due process clause of the Fourteenth Amendment when Mr. Kleen threatened to expel Jason unless he talked. The legal term used is that Jones has no standing to object to Mr. Kleen's action against Jason. Yet if this were the law, police would be tempted to violate the rights of low level criminals in order to get their superiors, and, therefore, Jones ought to be able to have the statement excluded against him to stop such police misconduct.

11. The due process clause of the Fourteenth Amendment requires that some form of a hearing be given to students prior to being expelled from school. No hearing was given Cheryl. The reason for the hearing in this case is that Cheryl may be falsely accused--Samantha may be jealous of her, or lying because she needs $50. Cheryl would like to be able to ask Samantha questions--called cross-examination--at such a hearing. It is unclear just what the rights are in a student expulsion case; they were quite limited in a student suspension case, *Goss v. Lopez*, 419 U.S.565 (1975) which did not give the right to cross-examine witnesses to the suspended student, but an expulsion is a much more serious punishment and therefore more rights should be available.

Aside from the United States Constitution, state law may also give certain hearing rights prior to expulsion.


SUPREME COURT CONVENES IN NEW YORK CITY.
THIS COURT IS NOW IN SESSION... WHAT'S OUR FIRST CASE... WE HAVE NONE?... COURT ADJOURNED!

EST COPY AVAILABLE

Lesson 8: The Cases of Sports and the Constitution
(6-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the First and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

constitutional/unconstitutional
discrimination
equal protection
First Amendment
Fourteenth Amendment

NOTES FOR THE LAWYER OR LAW STUDENT

Getting Ready for the Lesson

1. This lesson can be presented in approximately 25 to 30 minutes. You may want to combine it with another lesson or build in one of the follow-up activities such as a role play or creation of an illustration.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson, students will need to read "The Cases of Sports and the Constitution," Student Handout 8-1.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that eleven and twelve year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students, if the teacher has not already done so. Spend a few minutes telling them about who you are and what you do.

2. Ask students if they enjoyed reading the Sports and Constitution cases and if they think they identified all the facts. Briefly review the cases for them. Ask students to raise their hands to volunteer facts about each case. Be sure each fact is accurate before writing it on the board for all student to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about the cases.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the sports cases are fair or if they violate the U.S. Constitution.

5. Distribute a copy of the case questions, Student Handout 8-2, to each student. Starting with question 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question, and go on to the extra activity (if any) that you have planned.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. When your visit has reached the 40 minute point, close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 45-50 minutes.

NOTES FOR THE CLASSROOM TEACHER

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 8. Ask students to read the cases description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

The Cases of Sports and the Constitution

The State Department of Education's Division of Athletics adopted two rules concerning athletic competition between schools:

Rule 1. Members of the opposite sex may not compete on the same teams in the following sports: football, basketball, and baseball.

Rule 2. Nothing may be worn on a player's head during basketball games.

Rule 3. A majority of the members of an athletic team may choose to pray during timeouts; all team members must stay with the team during the timeout, although an individual may not be forced to pray. A team member who refuses to stay with the team during prayer must be suspended from the team.

Rule 4. Only American citizens may officiate at athletic events between schools.

Mary Ramirez is a tenth grader at Small Middle School. There are 250 students at the school, half boys and half girls. Mary is the best baseball player in the school; she was informed by the baseball coach that she could not play on the boys' varsity baseball team since she would be unable to compete when the team played other schools.

Fred Herbert is the tallest member of the basketball team. According to his religion, males must always have their head covered by a small hat when they appear in public. When Fred appeared at the first regular season basketball game against Large Middle School, the referee would not let him play unless he removed the hat from his head.

Nat Shore is the starting quarterback for his high school football team. The team decided to pray during timeouts. Nat refused to stay with the team while it prayed and was suspended from the team.

Pierre Boule is a citizen of France who has lived in the United States for 15 years. He is the best soccer referee in the state and has been refereeing games all his life. He has been told he can no longer referee because of Rule 4.

CASE QUESTIONS

The Cases of Sports and the Constitution

1. Mary Ramirez

   Is the state rule which prohibits boys and girls from competing in baseball games constitutional? Why or why not? Cite specific provisions of the Bill of Rights to support your argument.

2. Fred Herbert

   Is the state rule which prohibits the wearing of a head covering during basketball games constitutional when applied to a person whose religion always requires the wearing of such a head covering? Why or why not? Cite specific provisions of the Bill of Rights to support your argument.

3. Nat Shore

   Is it constitutional to dismiss a person from the team for refusing to stay with the team during prayer? Why or why not?

4. Pierre Boule

   Is it constitutional to prohibit non-U.S. citizens from refereeing athletic events? Why or why not?

Answers/Discussion Perspectives--For the Legal Resource Person

1. Mary Ramirez

The issue is whether segregating boys and girls in certain competitive sports violates the equal protection clause of the Fourteenth Amendment. Clearly, if the separation was on the basis of race, such a law would be unconstitutional. In general, laws which differentiate on the basis of sex are invalid, although the courts have been more willing to uphold such laws than those which classify on the basis of race.

The test the courts use to determine the validity of such laws is: does the state have an important reason for using a sex-based classification and does the law substantially further that reason?

The state would argue their important reasons for the law would be:

In general, boys are bigger and stronger and girls would therefore: a. be more likely to get hurt if boys and girls played together; b. girls would be less successful than if they competed only among themselves and that would lead to disappointment.

The state would also argue the rule substantially furthers those purposes and that no other rule would be as effective.

Mary would argue that such decisions should be left to the girls and their parents, not the state--if Mary and her parents are willing to compete and take the consequences, both physically and psychologically, that's their right. Further, Mary is the best baseball player in the entire school so the reason for the rule doesn't apply to her in any case.

Mary would also argue that the law is not substantially related to the purpose since other rules, not segregating on sex, could carry out the purposes of not endangering the players either physically or psychologically--the teams should be chosen solely on the basis of ability, not stereotypes.

Although the Supreme Court has not decided such a case, it has stricken laws which make assumptions about the differences between males and females, such as, males are more likely to drink and drive, therefore they cannot drink alcohol until they are 21, whereas females can drink at 18, *Craig v. Boren*, 429 U.S. 190 (1976). But the Court has upheld a congressional law which made boys, but not girls, register for the draft, *Rostker v. Goldberg*, 453 U.S. 57 (1981).

2. Fred Herbert

The issue which Fred will raise is whether his First Amendment right to free exercise of his religion is violated by Rule 2.

The rule itself is not directed at a person's religion--in all likelihood, the concern of the rule was that certain headgear might interfere with competitive athletics--it could harm an opposing player, it could fall off and trip a player, etc. So the question is: Is a rule which unintentionally applies to restrict a person's free exercise of religion subject to careful court scrutiny as it would be if the state enacted the law for the purpose of interfering with the person's religious exercise?

The state would argue that such a rule should be upheld so long as the state has a reason for the rule, which it does as described above.

Fred would say that the rule must be accommodated to a person's religious beliefs unless the practicing of those beliefs leads to a great harm. In this case, Fred would say that his hat won't lead to any of the dangers the state fears--it is not like a helmet which might not hurt someone and it won't fall off since it is kept securely in place by tape.

The Supreme Court is divided on how to approach a case like this. Some of the justices would be very deferential to the state and uphold the rule since it is merely an incidental infringement on religious practice; others would invalidate the rule as applied to Fred since the state could easily accommodate his religious practices while keeping the rule in effect in non-religious situations. See *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 110 S.Ct. 1595 (1990).

3. The Establishment Clause of the First Amendment has been interpreted by the Supreme Court to prohibit teacher-led religious activities such as prayer in the schools, even if a child is excused from praying, *Engel v. Vitale*, 370 U.S. 421 (1962); *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963). A child who might not want to pray may feel compelled to do so by peer pressure while a child who does not pray may be ostracized by his or her classmates. The Court has also invalidated a state law requiring a moment of silent prayer or meditation at the start of the school day because the motivation for the law was to require religious activity, *Wallace v. Jaffree*, 472 U.S. 38 (1985). On the other hand, the Supreme Court has upheld a federal law which permits student groups to hold bible readings or other religious activities after school so long as other student activities are permitted, *Board of Education v. Mergens*, 110 S.Ct. 2356 (1990). In Shore's case, the prayer takes place during a school-sponsored activity--athletics--and Shore is not a willing participant in the activity so his case seems more like the impermissible bible reading in the classroom.

4. Discrimination against aliens has been forbidden for certain occupations and permitted for others by the Supreme Court. The reason for striking down such restrictions is that aliens are politically powerless--they can't vote--and in such cases the courts are more likely to frown on laws directed against such persons. On the other hand, where the occupation involves matters where being a citizen could be important, the Court has upheld such restrictions. Laws which prohibit aliens from becoming civil service employees [*Sugarman v. Dougall*, 413 U.S. 634 (1973)] or lawyers [*In re Griffiths*, 413 U.S. 717 (1973)] have been thrown out; laws which prohibit aliens from becoming public school teachers, [*Foley v. Connelie*, 435 U.S. 291 (1978)] or police [*Ambach v. Norwick*, 441 U.S. 68 (1975)] have been upheld.

A referee has characteristics of a lawyer on the one hand and that of a police officer and a public school teacher on the other. Ultimately, it will be up to the Supreme Court to decide Pierre's case.

Lesson 9: A New System of Criminal Justice

(6-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the First, Fifth, Sixth, and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

acquitted
criminal justice system
defendant
exempt
Fifth Amendment
First Amendment
Fourteenth Amendment
grand jury
indigent
judicial hearing
jury
non-unanimous
Sixth Amendment
unanimous
witness

Getting Ready for the Lesson

1. This lesson can be presented in approximately 35-40 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson, students will need to read "A New System of Criminal Justice," Student Handout 9-1.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that eleven and twelve year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students, if the teacher has not already done so. Spend a few minutes telling them about who you are and what you do.

2. Ask students if they enjoyed reading the case and if they think they have identified all the facts. Briefly review the case for them. Ask students to raise their hands to volunteer facts about the case. Be sure each fact is accurate before writing it on the board for all students to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the system of criminal justice is fair or if it violates the U.S. Constitution.

5. Distribute a copy of the case questions, Student Handout 9-2, to each student. Starting with question question 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment of amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question or until your visit has reached the 35 minute point. After 35 minutes, tell the students that they can try to answer the remaining questions on their own, using the Bill of Rights as a reference.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 45-50 minutes.

NOTES FOR THE CLASSROOM TEACHER

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 9. Ask students to read the case description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

A New System of Criminal Justice

In order to save money in criminal trials and make them run more smoothly, a state decided to change its criminal justice system by doing the following:

1. Witnesses would not have to waste time coming to court; they could answer questions from their homes on closed circuit television.
2. The state would no longer provide free lawyers for indigent defendants accused of minor crimes.
3. Only nine persons would serve on juries instead of 12.
4. Defendants could be convicted by a 6 to 3 vote of the jury instead of a unanimous vote.
5. The press and the public would be excluded from all judicial hearings so that witnesses would testify more willingly.
6. There would no longer be a grand jury to decide if felony cases should be brought against defendants.
7. If a defendant is acquitted by the jury but the judge believes the evidence shows the defendant is clearly guilty, the defendant may be re-tried for the same crime.
8. Women taking care of their children are exempt from serving on juries.

CASE QUESTIONS

A New System of Criminal Justice

1. Does the Constitution permit witnesses to testify against a person accused of crime by closed circuit television? Why or why not?
2. Can a state refuse to provide lawyers for indigents accused of minor crimes? Explain your answer.
3. Are nine-person juries permissible under the Constitution? Why or why not?
4. Are non-unanimous jury verdicts permissible? Explain your answer.
5. Can the press and public be excluded from trials? Why or why not?
6. Must a state provide a grand jury in felony cases? Explain your answer.
7. Can defendants acquitted by a jury be re-tried where the judge believes the defendant is clearly guilty? Why or why not?
8. Can a state exempt women taking care of children from serving on juries? Explain your answer.

Answers/Discussion Perspectives--For the Legal Resource Person

1. The confrontation clause of the Sixth Amendment requires that the defendant "be confronted with the witnesses against him." Normally, that means the witness sits in the witness chair facing the defendant, and that the defendant or his counsel has the right to cross-examine the witness. The reason for this protection is that our adversarial system of justice is built on the belief that this is the best way to insure the witness will tell the truth. However, what if the defendant is very disruptive in the courtroom so that the trial cannot go on? Must the defendant continue to be present? The Supreme Court held in the case of *Illinois v. Allen*, 397 U.S. 337 (1970) that in such circumstances, the defendant could be removed from the courtroom without violating the confrontation clause. More recently, the Court permitted cross-examination of young victims of sex crimes who were hidden by a screen from the defendant, *Maryland v. Craig*, 110 S.Ct. 3157 (1990).

   In this case, the reasons for having witnesses testify outside the courtroom--to save money--would not overcome the normal requirement of face-to-face confrontation.

2. The Sixth Amendment gives defendants the right to counsel. In 1963, the Supreme Court held that a person on trial for a felony who cannot afford counsel is entitled to have one provided at no cost by the state, *Gideon v. Wainwright*, 372 U.S. 335 (1963). This is one of the few examples of the Constitution requiring the spending of money by the state to enforce a specific provision of the Bill of Rights. The right to free counsel was extended to misdemeanors in the case of *Argensinger v. Hamlin*, 407 U.S. 25 (1990).

   Whether the state rule is constitutional depends on whether the crime involved could result in imprisonment. In *Scott v. Illinois*, 440 U.S. 367 (1979), the Supreme Court said that free counsel must be provided only if the defendant was going to be imprisoned. If only a fine was to be imposed, no counsel was required.

3. The Sixth Amendment gives persons accused of crime the right to a jury. But does "jury" mean a group of 12 persons? The Supreme Court held that the Sixth Amendment does not require 12 persons but that it must be at least six, *Ballew v. Georgia*, 435 U.S. 223 (1978). Therefore, the state law is valid.

4. In the case of *Apodaca v. Oregon*, 406 U.S. 404 (1972), the Supreme Court held that a less than unanimous verdict is permissible for state criminal trials but that verdicts in cases tried in federal court must be unanimous. This is one of the few situations where the Constitution permits different results between the federal and state systems.

5. The Sixth Amendment gives defendants the right to a public trial, but if the defendant wants the trial to be closed, does the press have a right to attend? Defendants might want closed hearings before trial because publicity about the case might prejudice persons who might read the papers and become jurors. Yet the public has an interest in pretrial proceedings because publicity would help ensure the officials will act properly for fear of press reporting about irregularities.

In *Press Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986), the Supreme Court held that the press has a First Amendment right to attend pretrial proceedings.

6. The Fifth Amendment requires that defendants be indicted by a grand jury before being tried for a crime. Grand juries determine whether there is probable cause to believe that a defendant has committed a crime before being made to stand trial. To be convicted, a defendant must be found guilty at trial beyond a reasonable doubt. Can a state do away with the grand jury in state case? In *Hurtado v. California*, 110 U.S. 516 (1889), the Supreme Court held that states could do away with the grand jury, but that the Fifth Amendment does require a grand jury indictment of a defendant in federal trials. This is one of the few instances where a provision of the Bill of Rights applies differently for state defendants than for federal defendants.

7. The Fifth Amendment provides that no person shall twice be put in jeopardy for the same crime. This is the double jeopardy clause. Since the state law would permit trying a person again after an acquittal, the double jeopardy clause would be violated. There are situations, however, where two trials are permissible. These include cases where there is a mistrial because a juror got sick; where there is a hung jury, that is, the jury cannot agree on a verdict of acquittal or conviction; or where the defendant is found guilty but the case is reversed because of a mistake at trial such as the admission into evidence of unconstitutionally obtained evidence.

8. The Sixth Amendment guarantees the defendant an impartial jury. This has been interpreted to mean that the defendant is entitled to a jury selected from a representative cross-section of the community. State laws which have permitted women to be excused have been held to violate the defendant's right to an impartial jury, *Duren v. Missouri*, 439 U.S. 357 (1979). In this case, not all women are exempted, just those caring for children, but since this would have the result of exempting many women, it would probably violate defendant's rights.

   Additionally, the Fourteen Amendment's equal protection clause would be violated by exempting women, but not men, who care for children. The state would not be able to justify this discriminatory law.

Lesson 10: Right to Die Cases

(6-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the Fifth and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

Fifth Amendment
Fourteenth Amendment
incompetence
incurably ill
terminate treatment

NOTES FOR THE LAWYER OR LAW STUDENT

Getting Ready for the Lesson

1. This lesson can be presented in approximately 35-40 minutes, including class discussion.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit.) For this lesson, students will need to read "Right To Die Cases," Student Handout 10-1.

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that eleven and twelve year olds can understand.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students, if the teacher has not already done so. Spend a few minutes tell them who you are and what you do.

2. Ask students if they enjoyed reading the Right to Die Cases and if they think they identified all the facts. Briefly review the case for them. Ask students to raise their hands to volunteer facts about the case. Be sure each fact is accurate before writing it on the board for all students to see.

3. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

4. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the Right to Die Cases are fair or if they violate the U.S. Constitution.

5. Distribute a copy of the case questions, Student Handout 10-2, to each student. Starting with question question 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment of amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

6. Continue as in 5 above for each remaining question or until your visit has reached the 30 minute point. After 30 minutes, tell the students that they can try to answer the remaining questions on their own, using the Bill of Rights as a reference.

7. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

8. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

9. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 45-50 minutes.

NOTES FOR THE CLASSROOM TEACHER

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.

2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.

3. Distribute the case description for Lesson 10. Ask students to read the case description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.

2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.

3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.

4. Invite a constitutional scholar to visit the classroom to share information with the students.

5. Have students write an essay on how the Bill of Rights relates to their lives today.

6. Have students write an essay on the Bill of Rights and the future.

7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.

8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTION

Right to Die Cases

1. The state legislature of state A passes a law entitled, The Termination of Treatment Act of 1991 or TTA. It provides that everything must be done to preserve a person's life, without regard to cost or any other consideration, and that no one has the right to die.

Ms. Apple is a person suffering from an incurable illness, who does not want to undergo chemotherapy which could prolong her life for three months but which will cause her great pain.

2. A state legislature of state B passes a law, the Personal Decision Act of 1991 or PDA, which permits individuals suffering from an incurable disease to refuse treatment, but does not permit the person to give the power to decide whether to terminate treatment to another person.

Mr. Banton lives in state B. He created a living will which said that, should he become incurably ill and unable to make a decision on whether to live, his doctor could decide whether to terminate treatment thereby causing his death. Mr. Banton is now incurably ill and in a coma. The PDA does not permit such living wills, but Mr. Banton's family believes the PDA is unconstitutional.

3. State C passes the Limited Right to Die Act of 1991 or LRDA. It permits a person who cannot make the decision to terminate treatment because of incompetence to have treatment terminated if the person had expressed, in writing, a desire to have treatment terminated should the person become incurably ill.

Ms. Carroll was involved in an auto accident at the age of 19 and has been unconscious for three years. She has no chance of recovering from her coma. She is able to breathe on her own but must be fed and given water intravenously. She could live for another 50 years. Two years prior to the accident, she told her parents, in front of several witnesses, that should she ever suffer from a serious accident that she would not want to live. Since she had not expressed her wishes in writing, however, the doctors in the state hospital refuse to disconnect the tubes. Further, state C does not consider provision of food and water to be treatment so even if her wishes had been in writing, she could not have the food and water tubes removed.

CASE QUESTIONS

Right to Die Cases

1. Is the TTA constitutional as applied to Ms. Apple? Why or why not?

2. Does Mr. Banton have the constitutional right to have his doctor decide whether to terminate treatment? Explain your answer.

3. Does Ms. Carroll have a constitutional right to have the food and water tubes disconnected which will cause her death? Why or why not?

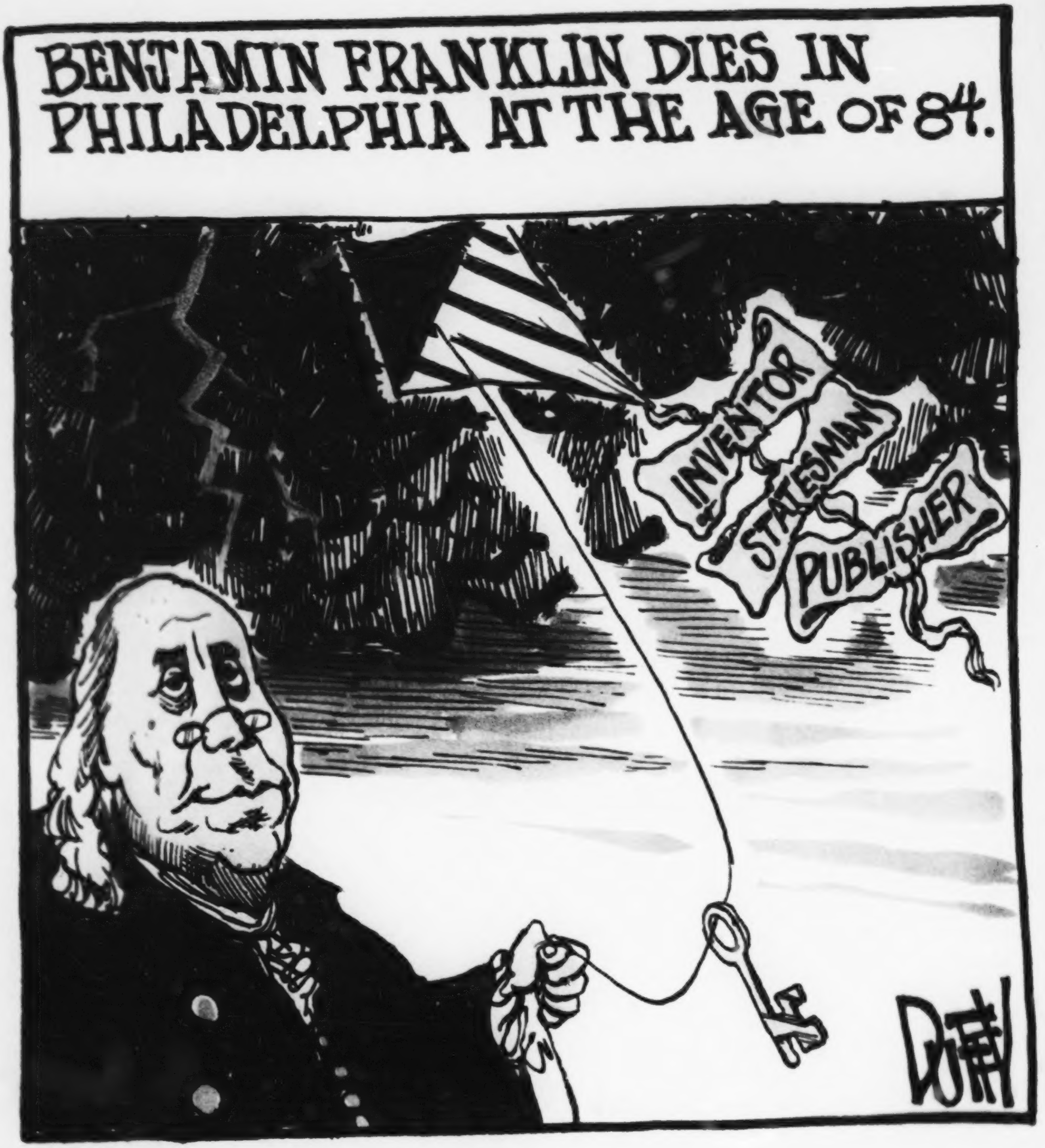
Answers/Discussion Perspectives--For the Legal Resource Person

1. In *Cruzan v. Director, Missouri Dept. of Health*, 110 S.Ct. 2871 (1990), the Supreme Court said that a competent person who is suffering from an incurable illness has a liberty interest under the Fourteenth Amendment due process clause to terminate life support systems. Thus, the TTA as applied to Ms. Apple is probably unconstitutional.

2. The majority opinion in the Cruzan case left open the question of whether the Constitution requires that a person be allowed to give the decision whether or not to terminate treatment to another. It appears, however, that a majority of the justices who participated in that decision would permit Mr. Banton's doctor to stop further treatment.

3. In *Cruzan*, the Supreme Court permitted the state to require that a person, like Ms. Carroll, express her wishes to die by clear and convincing evidence. Since there was no proof that the patient in the Cruzan case had so expressed herself, the state could prevent her doctors from terminating treatment. In the case of Ms. Carroll, she had expressed herself clearly and convincingly, but not in writing. It is doubtful that the courts would uphold such a law.

   In the Cruzan case, the Court did not distinguish food and water from medical treatment. So long as the patient in a persistent vegetative state had expressed her wishes to die clearly and convincingly, she has the right to die.


BENJAMIN FRANKLIN DIES IN PHILADELPHIA AT THE AGE OF 84.
INVENTOR
STATESMAN
PUBLISHER

BEST COPY AVAILABLE

Lesson 11: Discrimination Cases

(6-8)

PURPOSE AND OBJECTIVES

The purpose of the lesson is to introduce and/or extend students' understanding of the nature and provisions of the Bill of Rights. Specific objectives are to:

1. Develop and extend students' understanding of the history and purposes of the Bill of Rights;
2. Develop and extend students' understanding of specific provisions of the Bill of Rights, with an emphasis on the Fifth and Fourteenth Amendments;
3. Develop and reinforce students' abilities to use a case study approach to analyze Bill of Rights-related issues; and
4. Help students relate Bill of Rights-related principles to their everyday lives.

KEY CONCEPTS/VOCABULARY WORDS

cross-examination
discrimination
equal protection
Fifth Amendment
Fourteenth Amendment
impact discrimination
intentional discrimination

NOTES FOR THE LAWYER OR LAW STUDENT

Getting Ready for the Lesson

1. This lesson can be presented in approximately 15-20 minutes, including class discussion. You may want to combine it with another lesson or build in one of the suggested follow-up activities.

2. At least one week before the lesson, contact the classroom teacher to confirm the date and time of your visit and to share information about the lesson. Give the teacher a complete copy of the lesson materials including Objectives, Key Concepts, Notes for the Lawyer or Law Student, Notes for the Teacher, and any handouts or exercises you wish students to read and complete before your visit. (In many lessons, students are asked to read a case description and to identify all facts in the case before your visit. In this instance, the case description is so brief that it doesn't need to be distributed ahead of time.)

3. Review the lesson objectives and make sure that you are prepared with strategies for addressing each one.

4. Review the following sections of this resource guide:

   - Working With the Classroom Teacher
   - Working With K-8 Students
   - If relevant, Working With Special Students
   - Background and History of the Bill of Rights
   - Appendix B, article on using the Socratic method

5. Review the Key Concepts/Vocabulary Words for the lesson and be prepared to define and/or discuss these concepts with the students using simple, straightforward language that eleven and twelve year olds can understand. (See Glossary) You may want to share a copy of the Glossary with the students.

6. Review the case or cases for the lesson, the questions associated with each, and the possible answers. The answers are for your information and are not for distribution to the students. The answers will help you to guide student discussion and ensure that all major points are covered.

7. Make sure you have a sufficient number of copies of any additional handouts including copies of the Bill of Rights, an evaluation form for the teacher, and evaluation forms for the students.

Teaching the Lesson

1. Introduce yourself to the students, if the teacher has not already done so. Spend a few minutes tell them who you are and what you do.

2. Distribute a copy of "Discrimination Cases: Case Descriptions and Case Questions," Student Handout 11-1 to each student. Ask students to read along silently as you read the case description aloud.

3. Ask students to raise their hands to volunteer facts about the cases. Be sure each fact is accurate before writing it on the board for all students to see.

4. After all of the facts are identified, tell students that you would like them to answer a few questions about the case.

5. Distribute a copy of the Bill of Rights and Section 1 of the Fourteenth Amendment (Appendix A) to each student. Ask them if they know what the Bill of Rights is and have them share their responses with the class. Expand the discussion as needed but don't let it go on longer than four or five minutes. Explain the relationship between the Bill of Rights and the Fourteenth Amendment. Tell the students that they will be using the Bill of Rights to decide whether or not the actions in the cases are fair or if they violate the U.S. Constitution.

6. Now have the students discuss the case questions. Starting with question question 1, ask students to read the question to themselves as you read it aloud. Ask students to refer to their copy of the Bill of Rights to help them with their answers. Ask for volunteers to answer each question. After each response, ask the class how many of them agree and disagree with the response. Ask two or three students who agree to give their reasons. Do the same for students who disagree. Have students identify the amendment or amendments that provide the relevant right or protection. Be sure to give the students sufficient time to respond to each question. Expand their responses as needed before going on to the next question. The important point here is to use the Socratic method to get students to explore issues, arguments, and reasoning behind different points of view (See Appendix B). As Goldman states, "The goal is not to come up with 'the' answer but rather to have the students understand that constitutional cases have two sides."

7. Continue with question 2 and any follow-up activities until your visit has reached the 35-40 minute point.

8. Focus attention on the Bill of Rights as a whole. Ask students to identify other rights or protections guaranteed in the Bill of Rights that weren't mentioned in the lesson.

9. Close the lesson by asking the students and teacher to complete a brief evaluation form to let you know how well they liked the lesson. Tell them that their suggestions will help you to make a better presentation next time.

10. Collect the evaluation forms and thank the teacher and students for inviting you to visit their classroom. Don't let your visit exceed 45-50 minutes.

Preparing Students for the Lawyer or Law Student's Visit

1. Review the lesson materials provided by the lawyer or law student.
2. Several days before the lawyer or law student is to visit the classroom, let students know they will be having a visitor. Explain who the visitor will be and that he or she will be helping students to understand their basic rights as citizens.
3. Distribute the case description for Lesson 11. Ask students to read the case description and identify as many of the facts as possible. Have them list the facts on the bottom or reverse side of the case description sheet. This exercise can be done in class or as independent study.

Follow-Up Activities

1. Have students conduct research on the history of one of the ten amendments.
2. Have students conduct research on what life was like in America in the eighteenth century when the U.S. Constitution and Bill of Rights were written.
3. Have students identify and conduct research on one or more of the framers of the U.S. Constitution.
4. Invite a constitutional scholar to visit the classroom to share information with the students.
5. Have students write an essay on how the Bill of Rights relates to their lives today.
6. Have students write an essay on the Bill of Rights and the future.
7. Have students develop their own role plays of one or more of the rights-related issues presented in the lesson.
8. Have students create an illustration of one or more of the rights-related issues presented in the lesson.

CASE DESCRIPTIONS

Discrimination Cases

A state law gave preference in admissions to state colleges to persons who had served in the U.S. armed forces. Because women had not served in substantial numbers until recently, the effect of the law was to prefer men over women. Milly Tarry was denied admission to the best state college while less qualified men were admitted because they served in the armed forces. Milly wants to show that the intent of the law was to discriminate against women by cross-examining the state legislators who sponsored the law.

Another state law gave preference to women in admission to state medical schools.

CASE QUESTIONS

Discrimination Cases

1. If a law has the effect, but not the intent, of disadvantaging women, is the Constitution violated? Why or why not?

2. Even if a law doesn't explicitly discriminate, can other proof be offered in court to show discrimination such as putting the sponsors of the legislation on the stand and asking them if they intended to discriminate? Why or why not?

3. Is the Constitution violated by a state law which gives preference to women in admission to state medical schools?

Answers/Discussion Perspectives--For the Legal Resource Person

1. If the admissions policy explicitly said that men were given preference over women, courts would invalidate the law as a violation of the equal protection clause of the Fourteenth Amendment unless the government could justify the law by showing there was an important reason to favor men and the law substantially carried out that reason. (If the law was a federal law, it would be challenged under the due process clause of the Fifth Amendment since there is no equal protection clause in the Fifth Amendment.) Since there is no important reason to favor men over women, the law would be unconstitutional if it explicitly did so.

   But this law doesn't discriminate in its language, although it does so in terms of its effect or impact. Should impact discrimination be viewed in the same way as intentional discrimination under the Constitution?

   The Supreme Court in the case of *Washington v. Davis*, 426 U.S. 229 (1976), held that only intentional discrimination (in that case, based on race) would violate the Constitution, while impact discrimination is permissible. In *Personnel Administration of Mass. v. Feeney*, 472 U.S. 256 (1979), it held that only intentional sex discrimination violates the Constitution.

2. In order to prove intentional discrimination where the law doesn't specifically mention sex, Milly may offer other proof, including, if necessary, putting the legislation's sponsors on the witness stand. In rare cases, where the impact is quite dramatic, impact alone can prove intentional discrimination. For example, in the case of *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), only persons of Chinese ancestry were denied permits to operate laundries in wooden buildings while white operators were permitted to operate wooden laundries. In that case, statistics alone were sufficient to prove intentional discrimination.

3. A very controversial area of constitutional law in recent years has been that of affirmative action, that is, giving preference to minorities and women to compensate for past discrimination. The justices on the Supreme Court are divided in their approach to this topic. In general, if a law is intended to make up for past discrimination against women, rather than being based on stereotypical assumptions about men or women, it will be upheld as constitutional. In the case of *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), the Court struck down a law which provided that only women could attend a state nursing school, on the grounds that it could not be said the law remedied past discrimination against women. A preference for women in medical school admission could be distinguished since women have been discriminated against in the past for medical school admissions but not for nursing school.

   With respect to preference based on race, the Court has been less willing to uphold such laws than those based on sex. It has indicated it would permit the use of race to be a factor in admissions to college because of the state's interest in having a diverse student body, *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978). However, it invalidated a preference for minorities in construction contracts with the city, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989). The Court has been more willing to let Congress give racial preferences than the states, [*Fullilove v. Klutznick*, 448 U.S. 448 (1980), (public construction contracts; *Metro Broadcasting, Inc. v. FCC.*, 110 S.Ct. 2977 (1990), (broadcasting licenses)].

EVALUATING THE PROGRAM

The following assessment instruments are included for your use in evaluating the effectiveness of your presentation or program:

1. A Presentation Assessment Form for the Classroom Teacher (to be completed by the classroom teacher in every class that you visit).
2. A Presentation Assessment Form for Students in Grades 4-8 (to be completed by the students in 4-8 classrooms that you visit; K-3 students will not complete a written evaluation).
3. Form for the assessment of the resource guide (to be completed by you, the legal resource person, after you have had a chance to review the materials and try them out.

Send your completed forms to:

Phi Alpha Delta Public Service Center
7315 Wisconsin Avenue
Suite 325 E
Bethesda, MD 20814
(301) 961-8985

School:____________________
Lesson:____________________
Grade:____________________

PRESENTATION ASSESSMENT FORM FOR THE CLASSROOM TEACHER: TEACHING ABOUT THE BILL OF RIGHTS IN ELEMENTARY AND MIDDLE SCHOOL CLASSROOMS

Please rate the following aspects of the presentation and classroom visit.

		Excellent				Poor
1.	Pre-visit Contact/Planning	5	4	3	2	1
2.	Organization of the Presentation	5	4	3	2	1
3.	Information	5	4	3	2	1
4.	Materials	5	4	3	2	1
5.	Grade-Level Appropriateness	5	4	3	2	1
6.	Presenter's Rapport with Students	5	4	3	2	1
7.	Students Participation	5	4	3	2	1
8.	Student Interest	5	4	3	2	1

9. Would you encourage other teachers to make use of a lawyer or law students to teach about the Bill of Rights on the basis of this experience?

10. What might the presenter have done differently to strengthen the lesson?

11. Comments:

School:____________________
Lesson:____________________
Grade:____________________

PRESENTATION ASSESSMENT FORM FOR STUDENTS (4-8) TEACHING ABOUT THE BILL OF RIGHTS IN ELEMENTARY AND MIDDLE SCHOOL CLASSROOMS

Circle The Best Answer

1.	I liked the lesson on the Bill of Rights.	YES	NO
2.	I learned a lot from the lesson on the Bill of Rights.	YES	NO
3.	I understood what the visitor was saying.	YES	NO
4.	The visitor called on me at least one time.	YES	NO
5.	The case was fun to read.	YES	NO
6.	I could answer most of the questions about the case.	YES	NO
7.	The visitor liked us.	YES	NO
8.	I want to learn more about the Bill of Rights.	YES	NO

RESOURCE GUIDE ASSESSMENT FORM
TEACHING ABOUT THE BILL OF RIGHTS IN ELEMENTARY AND MIDDLE SCHOOL CLASSROOMS

Please rate each of the following components of *Teaching About the Bill of Rights in Elementary and Middle School Classrooms*, and respond to the questions that follow. Your responses and suggestions will help us improve our materials in the future.

Very Helpful Not
Helpful

1.	ORGANIZATION OF THE GUIDE	5	4	3	2	1
2.	FORMAT OF THE GUIDE	5	4	3	2	1
3.	OVERVIEW	5	4	3	2	1
4.	WORKING WITH THE CLASSROOM TEACHER	5	4	3	2	1
5.	WORKING WITH K-8 STUDENTS	5	4	3	2	1
6.	WORKING WITH SPECIAL STUDENTS	5	4	3	2	1
7.	BACKGROUND AND HISTORY OF THE BILL OF RIGHTS	5	4	3	2	1
8.	LESSON PLANS					
	Lesson 1: A Special Birthday Party	5	4	3	2	1
	Lesson 2: Rights in Rogertown	5	4	3	2	1
	Lesson 3: Rights and Responsibilities	5	4	3	2	1
	Lesson 4: North Harmony	5	4	3	2	1
	Lesson 5: New Trend	5	4	3	2	1
	Lesson 6: Camp Watchem	5	4	3	2	1
	Lesson 7: Tech High	5	4	3	2	1
	Lesson 8: Sports and the Constitution	5	4	3	2	1
	Lesson 9: A New System of Criminal Justice	5	4	3	2	1
	Lesson 10: Right To Die Cases	5	4	3	2	1
	Lesson 11: A Discrimination Case	5	4	3	2	1
9.	EVALUATING THE PROGRAM	5	4	3	2	1
10.	ADDITIONAL RESOURCES	5	4	3	2	1
11.	APPENDICES					
	A. Bill of Rights/Fourteenth Amendment	5	4	3	2	1
	B. Using the Socratic Method	5	4	3	2	1

12. What suggestions do you have for strengthening the lesson plans?

13. What specific suggestions do you have for strengthening the resource guide in general?

14. Comments:

ADDITIONAL RESOURCES

1. *A Resource Guide to Assist Lawyers and Law Students For Participation in Kindergarten through Eighth Grade Law-Related Classrooms*. Washington, D.C.: Phi Alpha Delta Law Fraternity, International, October 1987.

2. Goldman, Roger; Jenkins, Steve; Riekes, Linda; and Slane, Sharon. *Teacher's Resource Manual: The Bill of Rights and You*. St. Paul, MN: West Publishing Company, 1990.

3. Jenkins, Steve; Riekes, Linda; Goldman, Roger; and McKissack, Patricia. *The Bill of Rights and You*, A Student Book. St. Paul, MN: West Publishing Company, 1990.

For further information and resources contact:

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GLOSSARY

acquitted	Found not guilty of a criminal charge by a judge or jury.
arrest warrant	An order signed by a judge, based on probable cause, authorizing an arrest
Bill of Rights	The first ten amendments to the United States Constitution, ratified in 1791. State constitutions also contain bills of rights. (For young students, a special set of rules that gives us important rights.)
constitutional	Not in conflict with the U.S. Constitution; legal.
criminal justice system	The system of laws and procedures for punishing criminals.
cross-examination	The process of questioning a witness called by the opposing party in an effort to show that statements or answers given earlier were false or to bring out evidence favorable to one's case.
cruel and unusual punishment	This language, appearing in the Eighth Amendment and many other constitutions, prohibits any punishment which is barbaric or otherwise extremely offensive.
defendant	A person against whom legal actions are brought. In a civil case, the defendant is the person being sued. In a criminal case, the defendant is the person accused of committing a crime.
delinquent	A child who has committed an act that, if committed by an adult, would be a crime under federal, state, or local law. The term is also used to describe juveniles found by the juvenile court to be incorrigible or in need of supervision.
discrimination	Treating people differently under the law.
drug testing	Using scientific means to determine whether or not a person has been using drugs.
due process	The constitutional requirement of the Fifth and Fourteenth Amendments that all laws and legal procedures must meet certain basic standards of fairness and reasonableness.
equal protection	Equal treatment under the law, protected by the Fourteenth Amendment.
exclusionary rule	The rule whereby evidence seized through illegal police conduct is excluded from a trial.
freedom	The quality or state of being free and having a

	choice of actions. (For young students, not having other people telling you what to do.)
freedom of press	The right of the press to express opinions without fearing government interference, guaranteed by the First Amendment. (For young students, the right of newspapers to print anything they want to print.)
freedom of speech	The right of individuals to express their opinions without fearing government interference, guaranteed by the First Amendment. (For young students, the right to say whatever we want to say, as long as it doesn't hurt other people.)
freedom of religion	The right of individuals to practice a religion of their choice, guaranteed by the First Amendment.
good faith exception	The legal doctrine which permits the use of illegally seized evidence in a trial when the officer reasonably believed that the warrant authorizing the seizure was validly issued even though it was not.
grand jury	A group of 12 to 23 people who hear evidence and decide whether or not there is enough evidence to charge a person with a crime.
impact discrimination	Discrimination which occurs even though there was no intent to discriminate.
incompetence	The state of being unable to make important decisions or take care of oneself.
incurably ill	Having a serious illness for which there is no cure.
indigent	Poor; unable to pay for legal assistance.
intentional discrimination	Discrimination which is purposeful.
involuntary confession	A confession given under force, a threat of force, or other coercion.
judicial hearing	A hearing before a judge.
jury	A group of persons selected at random from the community who were called to jury service for a given day and have been selected to hear a case.
Miranda warnings	The warnings that law enforcement officers must give to suspects before questionning them. These rights are guaranteed by the self-incrimination provisions of the Fifth Amendment and include the right to remain silent, the right to have an attorney present during questionning, the right to have an attorney appointed if the person cannot afford to pay for his or her own defense, and that anything said can and will be used against the person in court.

non-unanimous	Not in 100 percent agreement.
probable cause	Reasonable grounds, known personally or through reliable sources, to believe that a person has committed a crime.
reasonable searches and seizures	Searches and seizures that are conducted with probable cause to believe that a crime has been committed, and are ordered by a judge.
reasonable suspicion	Having some reliable evidence to believe that an act has been committed. It is more than a guess but less than probable cause.
regulation	A legal rule or order.
responsibilities	Things for which a person is responsible such as following rules and laws.
rights	Freedoms guaranteed under the law. (For young students, things we can do without being afraid of getting into trouble and without other people telling us we can't do it.)
right to confront accusers	A right guaranteed by the Sixth Amendment guaranteeing persons the right to question witnesses who are testifying against them in a trial or hearing.
right to privacy	To be free from unwarranted interference by the government.
rule	A guide or principle for action.
search warrant	An order issued by a judge giving police the power to search and seize items related to a crime.
self-incrimination	Saying or writing something which is then used against the speaker or writer. The Fifth Amendment prohibits the government from compelling anyone to incriminate himself or herself.
terminate treatment	Stop medical treatment that is helping an individual to stay alive.
200th birthday of the Bill of Rights	The Bill of Rights became law in December of 1791 and 1991 marks its 200th year of existence.
unconstitutional	In conflict with the U.S. Constitution and therefore not legal.
unanimous	In 100 percent agreement.
unreasonable searches and seizures	Government actions which violate the Fourth Amendment, usually because evidence is seized without probable cause or a warrant.
U.S. Supreme Court	The highest federal court in the United States.

warrantless search	A search conducted without a signed order from a judge.
witness	Someone who see an act being committed, such as a crime, or who has information relating to an act or crime.

APPENDIX A

BILL OF RIGHTS/FOURTEENTH AMENDMENT

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Second Amendment

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Third Amendment

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Seventh Amendment

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Eighth Amendment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

* * * * *

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B

USING THE SOCRATIC METHOD[6]

By
Roger Goldman

Law-related education is most effectively taught to elementary, middle, and high school students in the same way that it is taught to law students: by means of the Socratic method. In contrast to a lecture, the Socratic method relies on an interactive exchange among the students and instructor whose role is to pose questions. The goal is not to come up with "the" answer but rather to have the students understand that constitutional cases have two sides.

It is important to use a case with which the students can identify when first employing the Socratic method. The facts and questions should be given to the students the day before class discussion but the answers (cases, statutes, etc.) should not be handed out because this will end discussion, the students preferring to rely on what the Supreme Court has said rather than deciding for themselves.

There will inevitably be periods of silence when the Socratic method is used; the teacher must be comfortable with this and resist the temptation to give answers. Instead, rephrase the question in simpler or more graphic terms. Once the teacher gives the answers, the students will revert to a passive role.

The goal of a Socratic session is to expose the students to the various views surrounding difficult issues of constitutional law, rather than to get them to come up with the "right" answers.

Usually, the entire class can be involved by relying solely on volunteers. However, the instructor should be careful not to let any one student dominate the discussion and to look for the reluctant volunteer. Once it is clear what side each student is favoring (police or defense, for example), the instructor should alternate between calling on police oriented and defense oriented students.

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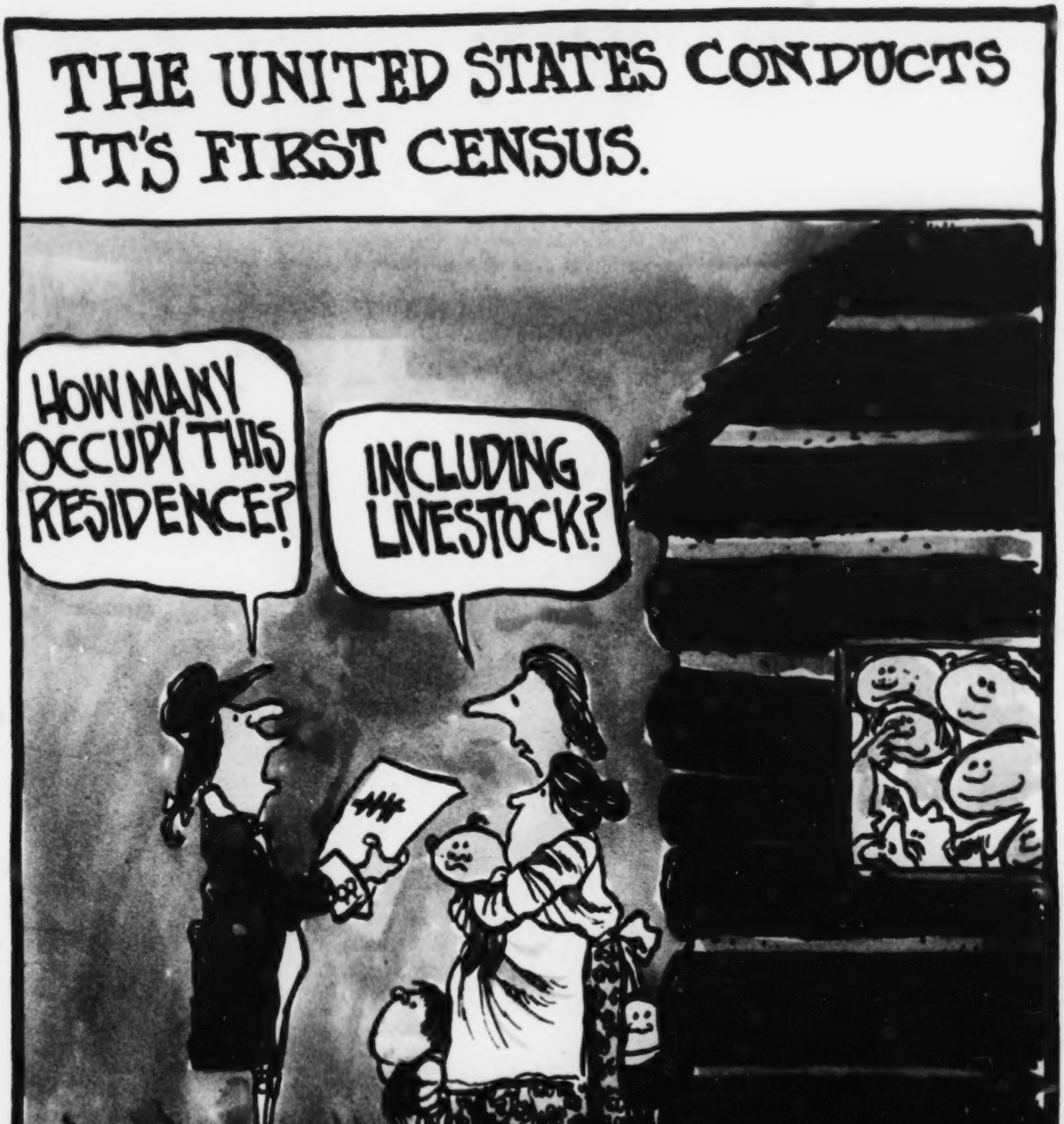
[6] Reprinted from Goldman, Roger. "Using the Socratic Method to Teach Constitutional Law." *Journal of Humanities and Civic Literacy*. Volume 1, Number 1, Summer 1988, pp. 33-34.


THE UNITED STATES CONDUCTS IT'S FIRST CENSUS.
HOW MANY OCCUPY THIS RESIDENCE?
INCLUDING LIVESTOCK?

BEST COPY AVAILABLE

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The Phi Alpha Delta Public Service Center is an affiliate of the Fraternity which administers the Fraternity's public service programs. These currently include delinquency prevention by law-related education, drug/alcohol education about the legal and social consequences of substance abuse, and Bicentennial-related programs associated with the 200-year anniversary of the U.S. Constitution.

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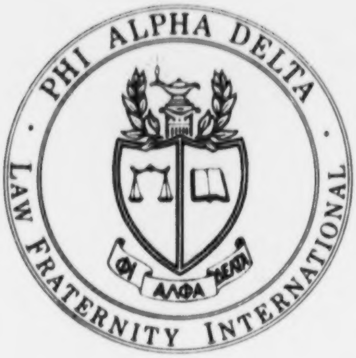

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